No. 83-6494

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

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SUPREME COURT, U.S.

THOMAS M. RETTIG,

Petitioner

v.

THE KENT CITY SCHOOL DISTRICT, et al.

Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

MOTION OF RESPONDENTS TO DISMISS OR AFFIRM

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INTRODUCTORY STATEMENT

On March 29, 1984, the Petitioner, Thomas M. Rettig (referred to hereinafter as "Petitioner"), caused this case to be docketed in this Court as an appeal. In the Petitioner's Jurisdictional Statement at page 35, it is alleged that the jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(2), which concerns an appeal by a party relying upon a state statute held by a Court of Appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States. The Petitioner's reliance on this statute in the present case is clearly misplaced since the issues presented to the Court of Appeals did not concern the validity or constitutionality of a state statute.

However, the Respondents are aware that, pursuant to 28 U.S.C. §2103, if an appeal to this Court is improvidently taken from the decision of a United States Court of Appeals in a case where the proper mode of a review is by petition for certiorari, the papers whereupon the appeal is taken shall be regarded and acted on as a petition for writ of certiorari as if duly presented to the Court at the time the appeal was taken. The Respondent submits that the proper method of review in the present case is by petition for certiorari, the granting of which is a matter of judicial discretion. See, Sup. Ct. R. 17.1. Therefore, with the assumption that the Petitioner's pleadings will be acted on as a petition for certiorari, the Respondents respectfully submit for the Court's consideration this Motion to Dismiss or Affirm.

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QUESTION PRESENTED

Whether Respondent, Kent City School District, provided Petitioner with a free, appropriate public education and related services during the 1978-1979 school year in accordance with the Education for All Handicapped Children Act of 1975, 20 U.S.C. §1401, et seq.

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LIST OF ALL PARTIES

Petitioner:

Thomas M. Rettig

Respondents:

Kent City School District
Dr. Donna Lightel (in her official capacity as Superintendent)
Michael Chrin (in his official capacity as Director of Child Study and Special Education)

State Board of Education of Ohio
Dr. Franklin B. Walter (in his official capacity as State Superintendent)

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OPINIONS AND JUDGMENTS BELOW

It is unclear from the copy of the pleadings which have been served upon the Respondents whether the Petitioner has included the complete text of the opinions rendered by the Courts below. Accordingly, the same have been appended to this Motion.

The opinion of the District Court is reported at 539 F. Supp. 768. The opinion of the Court of Appeals for the Sixth Circuit is reported at 720 F. 2d 463. In addition, on January 3, 1984, the Court of Appeals filed its Order denying the Petitioner's Motion for Rehearing, and on February 7, 1984, the Court entered its Order denying the Petitioner's Motion for Reconsideration of the Court's Order denying rehearing.

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JURISDICTION

As stated above, the Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. §1254(2). The Petitioner originally filed a Notice of Appeal in the United States Court of Appeals for the Sixth Circuit on or about February 29, 1984, but the same was returned by the Court with directions to proceed by way of a petition for writ of certiorari. A copy of this correspondence appears in the Appendix hereto. However, on March 29, 1984, the Petitioner filed a Jurisdictional Statement and other pleadings with this Court.

The Respondent submits that the provisions of 28 U.S.C. §1254(2) are not applicable to the present case. However, 28 U.S.C. §2103 requires the Court to treat the appeal papers filed by the Petitioner as a petition for certiorari. See, City of El Paso v. Simmons, 379 U.S. 497, 503 (1965). Therefore, the Respondent submits that this case is now before this Court upon a petition for a writ of certiorari.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Education for All Handicapped Children Act of 1975, 20 U.S.C. §1401 et seq., which appears in the Appendix attached hereto.

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STATEMENT OF THE CASE

IMPARTIAL DUE PROCESS HEARING:

This matter began in February of 1978 when the parents of the Petitioner requested an Impartial Due Process Hearing pursuant to 20 U.S.C. §1415 questioning the quality of the special education being provided to their son by the Kent City School District. Prior to proceeding to a due process hearing, several attempts to conciliate and mediate a resolution were unsuccessful. After several conferences between counsel for the parties and the designated Hearing Officer, the first of fourteen (14) hearing sessions began on January 29, 1979, and concluded on April 4, 1979.

On April 30, 1979, the Impartial Hearing Officer issued a comprehensive opinion which concluded that the Kent City School District was providing a free and appropriate public education to the Petitioner.

APPEAL TO STATE BOARD OF EDUCATION:

The parents of the Petitioner elected to proceed to an appeal of the Impartial Hearing Officer's decision to the Ohio State Board of Education in accordance with Ohio Revised Code §3323.05. Pursuant to the state statute the appeal was referred to a Referee who received the written arguments of both parties. On September 28, 1979, the Referee submitted his report to the Ohio State Board of Education in which he recommended the issuance of a final order affirming the conclusion of the Impartial Hearing Officer that the Kent City School District was providing a free and appropriate public education to the Petitioner.

The parents of the Petitioner filed with the Ohio State Board of Education their objections to the Referee's report in the form of a document containing over two hundred (200) pages. After a review of the objections, the Ohio State Board of Educa-

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tion accepted the recommendations of the Referee and affirmed the decision of the Hearing Officer on November 13, 1979.

UNITED STATES DISTRICT COURT PROCEEDING:

Pursuant to the provisions of 20 U.S.C. §1415(e)(2), a complaint was filed on behalf of the Petitioner in the United States District Court for the Northern District of Ohio, Eastern Division, on November 30, 1979. On December 13, 1979, an amended complaint was filed which incorporated additional allegations of constitutional infringements under 42 U.S.C. §1983, and joined, as defendants, the Superintendent and the Director of Special Education of the Kent City School District, the State Board of Education of Ohio, and the State Superintendent. All additional defendants were sued in their official capacities. The District Court conducted two (2) days of hearings in August of 1980 upon the Petitioner's request for a preliminary injunction, which was denied, and then held three (3) days of hearings in May of 1981 on the merits of the case. The Court rendered its final order on August 25, 1981.

The District Court upheld the Impartial Hearing Officer's decision on the vast majority of issues presented for review. The Court did, however, order the Kent City School District to provide the Petitioner with at least one (1) hour per week of extracurricular activities. The Court also ordered the school district to conduct a multi-factored evaluation of the Petitioner for the purpose of preparing a new individualized education program (IEP) for the 1981-1982 school year. The record shows, however, that the school district had repeatedly attempted to obtain voluntary parental consent to perform such a multi-factored evaluation without success.

UNITED STATES COURT OF APPEALS PROCEEDINGS:

A Notice of Appeal from the decision of the District Court was filed in the United States Court of Appeals for the

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Sixth Circuit on behalf of the Petitioner on September 22, 1981. In addition, the Kent City School District filed a cross-appeal which challenged the District Court's decision that at least one (1) hour per week of extracurricular activities must be included in the future IEP developed for the Petitioner.

The Court of Appeals issued its decision on November 8, 1983, which affirmed the judgment of the District Court in all respects except that portion requiring the school district to provide extracurricular activities to the Petitioner which was vacated and remanded for further consideration. In rejecting the challenge to the educational program developed for the Petitioner, the Court of Appeals stated:

> In sum, however, the plaintiff's arguments merely reflect a difference of opinion as to the most effective teaching methods available to advance Thomas' education. Various experts testified as to an appropriate educational program for Thomas. The courts, however, are not free to choose between competing educational theories and impose that selection upon the school system.
>
> 720 F. 2d at 465-566

Therein lies the essence of this case.

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SUMMARY OF ARGUMENT

In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), this Court held that a handicapped child receives a free, appropriate public education pursuant to the Education for All Handicapped Children Act of 1975, 20 U.S.C. §1401 et seq., when he is being provided "personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction," and that the "primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs" is left to state and local educational agencies. The Court of Appeals correctly applied these standards in determining that the Kent City School District is providing the Petitioner with a free, appropriate public education within the meaning of the Act.

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ARGUMENT

In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), this Court reviewed for the first time the policies, procedures, and objectives of the Education for All Handicapped Children Act of 1975, 20 U.S.C. §1401 et seq. This Court held in Rowley that the requirement contained in the Act that a state provide specialized educational services to handicapped pupils generates "no additional requirement that the services so provided be sufficient to maximize each child's potential 'commensurate with the opportunity provided to other children.'" 458 U.S. at 198. This Court further concluded that "the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside," 458 U.S. at 192, but implicit in the congressional purpose "is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." 458 U.S. at 200. Thus, this Court held that a state satisfies the Act's requirement of affording a handicapped child a free appropriate public education

> by providing personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

458 U.S. at 203-204

In addition, in Rowley this Court defined the responsibilities of the court in actions instituted pursuant to 20

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U.S.C. §1415(e)(2). This Court stated that

> [A] court's inquiry in suits brought under §1415(e)(2) is twofold. First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.
>
> 458 U.S. at 206-207

Finally, this Court cautioned that "[i]n assuring that the requirements of the Act have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the States." 458 U.S. at 207.

The case at bar, in essence, involves a choice between competing educational theories and teaching methods. As the Court of Appeals correctly pointed out, courts are not free to make such choices. 720 F. 2d at 466. This was reaffirmed by this Court in Rowley when it stated:

> We previously have cautioned that courts lack the "specialized knowledge and experience" necessary to resolve "persistent and difficult questions of educational policy." San Antonio Independent School Dist. v. Rodriguez, 411 U.S., at 42. We think that Congress shared that view when it passed the Act. As already demonstrated, Congress' intention was not that the Act displace the primacy of States in the field of education, but that States receive funds to assist them in extending their educational systems to the handicapped. Therefore, once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the States.
>
> 458 U.S. at 208

One must also be mindful that "the Act does not require States to make available the best possible option," Springdale School District No. 50 of Washington County v. Grace, 693 F. 2d 41, 43 (1982), cert. denied ___ U.S. ___, 103 S. Ct. 2086 (1983); rather, the primary issue is whether the IEP developed for the handicapped child is reasonably calculated to enable him or her to receive educational benefits. 693 F. 2d at 43.

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In the case at bar, the District Court specifically stated the following:

> This Court is unable to declare that the school system has failed Tom. The progress reports and the testimony of Tom's parents and teachers indicate that he has gained some social skills and some self-help skills...
>
> 539 F. Supp. at 778

In affirming this conclusion, the Court of Appeals stated:

> This Court is of the opinion, therefore, that the lower court was correct in refusing to interfere with the State's implementation of its educational program as it relates to Thomas. To the extent the plaintiffs requested the trial court to order the school district to include specific programs within Thomas' curriculum--for example, summer classes and continuous occupational therapy--this Court affirms the district court's denial of such relief inasmuch as the programs were not necessary to permit Thomas to benefit from his instruction.
>
> 720 F. 2d at 466

Thus, it is clear that the decision of the Court of Appeals is fundamentally correct, and that the result which was reached therein is consistent with this Court's decision in Rowley, supra. Accordingly, it should not be disturbed by this Court.

Additionally, the Respondents submit that this case does not present issues that are sufficiently important to warrant this Court's intervention. As Mr. Justice Stevens recently wrote in Board of Education of Rogers v. McCluskey, 458 U.S. 966, 971 (1982) (dissenting opinion):

> As JUSTICE REHNQUIST has reminded us, in "our zeal to provide 'equal justice under law,' we must never forget that this Court is not a forum for the correction of errors." Boag v. MacDougall, 454 U.S. 364, 367-368 (1982) (dissenting opinion). "To remain effective, the Supreme Court must continue to decide only those cases which present questions whose resolution will have immediate importance far beyond the particular facts and parties involved."

Finally, the Respondents direct the Court's attention to Sup. Ct. R. 21 governing the petition for certiorari. Specifically, Sup. Ct. R. 21.5 provides that the failure of the peti-

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tioner "to present with accuracy, clarity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition." The Respondent submits that the Petitioner has failed to comply with this standard in the case at bar, and accordingly, his petition should be denied.

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CONCLUSION

In light of the foregoing, it is apparent that the Court of Appeals correctly applied the directives given by this Court in Rowley, and that the Kent City School District was and is continuing to provide the Petitioner with a free, appropriate public education under the provisions of the Act.

The Respondents Kent City School District, Donna Lightel, Michael Chrin, State Board of Education of Ohio, and Franklin B. Walter, strongly urge this Court that Petitioner's request for jurisdiction be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Respondents to Dismiss or Affirm was served upon Eva O. Rettig, Mother of Thomas M. Rettig, 586 Francis Street, Kent, Ohio 44240, by regular U. S. mail service, this _____ day of May, 1984.

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Thomas M. RETTIG, et al., Plaintiffs-Appellants, Cross-Appellees,

v.

KENT CITY SCHOOL DISTRICT, Defendant-Appellee, Cross-Appellant,

and

Kenneth Cardinal, et al., Defendants-Appellees.

Nos. 81-3586, 81-3595.

United States Court of Appeals, Sixth Circuit.

Argued June 30, 1983.

Decided Nov. 8, 1983.

Handicapped student and his mother petitioned for review of decision of the Ohio State Board of Education which affirmed hearing officer's decision in favor of school district on complaint of the student's parents questioning quality of education their son was receiving. The United States District Court for the Northern District of Ohio, Ann Aldrich, J., 539 F.Supp. 768, affirmed hearing officer's decision but directed school district to provide student with one hour of extracurricular activities each week, and the parties cross-appealed. The Court of Appeals, Krupansky, Circuit Judge, held that: (1) school district provided adequate in-service training under terms of the Education for All Handicapped Children Act; (2) specific programs requested by plaintiffs were not necessary to permit student to benefit from his instruction; and (3) the Act did not require the state of Ohio to maximize potential of the student commensurate with opportunity provided to other children.

Affirmed in part and vacated and remanded in part.

* The Hon. John Feikens, United States District Judge for the Eastern District of Michigan, sitting by designation.

1. Schools ⇐148

The Education for All Handicapped Act did not oblige school district to provide in-service training to parents of handicapped student, and in-service training provided by the school district to its employed staff was adequate. Education of the Handicapped Act, § 601 et seq., as amended, 20 U.S.C.A. § 1401 et seq.

2. Schools ⇐148

District court properly refused to interfere with state of Ohio's implementation of its educational program as it related to handicapped student; specific programs requested by student's parents were not necessary to permit student to benefit from his instruction. Education of the Handicapped Act, § 601 et seq., as amended, 20 U.S.C.A. § 1401 et seq.

3. Schools ⇐148

The Education for All Handicapped Children Act did not require that the state of Ohio maximize potential of handicapped child commensurate with opportunity provided to other children. Education of the Handicapped Act, § 601 et seq., as amended, 20 U.S.C.A. § 1401 et seq.

Edward G. Kramer, Floyd J. Miller, Cleveland, Ohio, for plaintiffs-appellants, cross-appellees.

Eva Rettig, pro se.

Dennis M. Whalen (argued), G. Frederick Compton, Jr., Dennis M. Whalen Co., L.P.A., Cuyahoga Falls, Ohio, Gary E. Brown (argued), Asst. Atty. Gen., Columbus, Ohio, for defendant-appellee, cross-appellant.

Edward G. Kramer, Floyd J. Miller, Kramer and Associates Co., L.P.A., Cleveland, Ohio, amicus curiae on behalf of appellants.

Before LIVELY, Chief Judge, KRUPANSKY, Circuit Judge, and FEIKENS, District Judge *.

KRUPANSKY, Circuit Judge.

This is an appeal and cross-appeal from the final order of the District Court for the Northern District of Ohio in this action involving the education of a handicapped child.

The district court entered extensive findings of fact below and reference is made to that opinion for a full exposition of the background of this controversy. *See, Rettig v. Kent City School District*, 539 F.Supp. 768 (N.D.Ohio 1981). It is sufficient to restate here that Thomas M. Rettig (Thomas) is a severely handicapped teen-age child. Thomas displays symptoms of autism and is also believed to be mentally retarded.

In February of 1978 Thomas' parents requested a due process hearing pursuant to the Education for All Handicapped Children Act of 1975 (EHCA or Act) 20 U.S.C. § 1401 *et seq.*, questioning the quality of the education their son was receiving. A hearing was conducted before a Hearing Officer in accordance with § 1415(b)(2) of the Act. The Hearing Officer decided in favor of the Kent City School District and issued a comprehensive opinion on April 30, 1979. It was affirmed by the State Board of Education.

The initial complaint in this matter was filed in the District Court for the Northern District of Ohio on November 30, 1979. The complaint joined Thomas and his mother as parties plaintiff and named the Kent City School District as defendant. Plaintiffs, in the initial complaint, essentially petitioned for review of the state decision pursuant to 20 U.S.C. § 1415(e)(2),[1] and also asserted violations of the Rehabilitation Act of 1973, 29 U.S.C. § 794. An amended complaint incorporated additional allegations of constitutional infringements under 42 U.S.C. § 1983 and joined, as defendants, the superintendent of the Kent City School District, the director of special education for the district, the State Board of Education of Ohio and the state superintendent of education.

The lower court, subsequent to duly conducted hearings in August of 1980, denied plaintiffs' request for a preliminary injunction. The trial court issued its final order in May of 1981, subsequent to a trial of the case on its merits.

The trial court upheld the administrative Hearing Officer's decision, concluding that: (a) the defendants had provided adequate inservice training for faculty and staff; (b) the defendants had devised and implemented a reasonable educational program for Thomas which would not be modified; (c) a twelve month educational program for Thomas was not required under the Act; and (d) continuous occupational therapy for Thomas was not a requirement of the Act.

The lower court did, however, direct the Kent City School District to provide Thomas with one hour of extracurricular activities each week and further decreed that the State Board of Education amend its rules to conform with federal regulations.[2] The lower court concluded, as a matter of fact, that plaintiffs had failed to prove their constitutional infringements. It also characterized the plaintiffs' claims arising under the Rehabilitation Act as merely restatements of EHCA charges and disposed of those charges by incorporating them into its resolution of the latter. Finally, the lower court declined to award attorney fees.

The plaintiffs appealed the trial court's decision insisting that Thomas was being denied a free appropriate education. The

1. 20 U.S.C. § 1415(e)(2) provides that any party aggrieved by the resolution of an administrative hearing under the Act:

> shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

2. Federal regulations mandate a final disposition of all appeals from decisions of Hearing Officers within 30 days of issuance thereof. 34 C.F.R. § 300.512 (1982). The State rules permitted a 60-day interval.

Kent City School District cross-appealed from the lower court's order mandating the district to provide Thomas with one hour of extracurricular activities each week. The State revised its regulations in accordance with the lower court's order and did not appeal. *See* O.A.C. § 3301-51-02(6)(12)(f).

Initially, we conclude that the lower court's findings with respect to the constitutional claims are not clearly erroneous and we affirm the court's ruling as to those claims. This Court also agrees that, in this case, the plaintiffs' complaints purportedly arising under the Rehabilitation Act, with one exception, are resolved by the disposition of the EHCA claims. *See* 34 C.F.R. §§ 104.33, 104.36 (1982). Accordingly, this Court is confronted with only those issues joined under the EHCA. In considering the asserted violations of the EHCA the Court is directed to the Supreme Court's recent explication of the Act.

In *Board of Education of the Hendrick Hudson Central School District v. Rowley*, — U.S. —, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982), the Supreme Court reviewed the policies, procedures and objectives of the Act. It also specifically identified and delimited a court's obligation in actions instituted pursuant to § 1415(e)(2). The Court stated:

> [A] court's inquiry in suits brought under § 1415(e)(2) is two-fold. First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Id. at —, 102 S.Ct. at 3051 (footnotes omitted).

Plaintiffs urge that both inquiries should be answered in the negative. In addressing the procedural requirements of the Act the plaintiffs assert that the State failed to develop adequate programs for inservice training of teachers and support personnel as directed by the EHCA.

The EHCA specifically requires a State participating under the Act to submit a plan incorporating, *inter alia*:

> a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational instructional and support personnel,

[1] The district court found that the defendants had developed and implemented a wide range of inservice training programs which satisfied the requirements of the EHCA. That conclusion is supported by the record.

Plaintiffs have argued, however, that parents should be included within the meaning of "support personnel" and therefore the Kent City School District was obliged to provide inservice training to the parents of Thomas. The legislative history, however, discloses that Congress intended the term "support personnel" to denote professional staff employed by the school system. The Senate Report, in discussing the Act's provision regarding inservice training, stated, in pertinent part:

> High quality educational services for all handicapped children will require a greater number of support personnel, as well as teachers. The supportive services should be provided by trained occupational therapists, speech therapists, psychologists, social workers and other appropriately trained personnel.

S.Rep. No. 94-168, 94th Cong., 1st Sess. 34, *reprinted in* [1975] U.S.Code Cong. & Ad. News, 1425, 1457. Accordingly, plaintiffs' contention that "support personnel" should include parents is unfounded and this Court concludes that defendants provided adequate inservice training under the terms of the EHCA.

[2] The plaintiffs have challenged the quality of the educational program developed for Thomas in several respects. In sum, however, the plaintiffs' arguments merely reflect a difference of opinion as to the most effective teaching methods available to advance Thomas' education. Various

experts testified as to an appropriate educational program for Thomas. The courts, however, are not free to choose between competing educational theories and impose that selection upon the school system. As the Supreme Court admonished in *Rowley*, *supra* at ——, 102 S.Ct. at 3051–52:

> In assuring that the requirements of the Act have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the States. The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child. The Act expressly charges States with the responsibility of "acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and [of] adopting, where appropriate, promising educational practices and materials." § 1413(a)(3). In the face of such a clear statutory directive, it seems highly unlikely that Congress intended courts to overturn a State's choice of appropriate educational theories in a proceeding conducted pursuant to § 1415(e)(2).
>
> We previously have cautioned that courts lack the "specialized knowledge and experience" necessary to resolve "persistent and difficult questions of educational policy." *San Antonio School District v. Rodriguez*, 411 U.S. 1, 42 [93 S.Ct. 1278, 1301, 36 L.Ed.2d 16] (1973). We think that Congress shared that view when it passed the Act. As already demonstrated, Congress' intention was not that the Act displace the primacy of States in the field of education, but that States receive funds to assist them in extending their educational systems to the handicapped. Therefore, once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the States. (footnotes omitted). This Court is of the opinion, therefore, that the lower court was correct in refusing to interfere with the State's implementation of its educational program as it related to Thomas. To the extent the plaintiffs' requested the trial court to order the school district to include specific programs within Thomas' curriculum—for example, summer classes and continuous occupational therapy—this Court affirms the district court's denial of such relief inasmuch as the programs were not necessary to permit Thomas to benefit from his instruction.[3]

[3] The trial court ruled in favor of the plaintiffs in addressing the issue of Thomas' extracurricular activities. In granting this relief, the trial court relied on the following administrative regulation promulgated under the Act:

> § 300.306 Non-academic services.
>
> (a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in these services and activities.

34 C.F.R. § 300.306 (1982).[4] The regulation apparently adopts a standard designed to ensure that handicapped children are exposed to extracurricular activities on an equal basis with non-handicapped children.

In *Rowley*, however, the Supreme Court specifically rejected a construction of the

3. The lower court also ordered the School District to conduct a multi-factored evaluation of Thomas. The School District, in fact, had attempted to perform such an evaluation but his parents objected, charging that the basis of norm-referenced or standardized testing was inappropriate for autistic children. The evidence disclosed however that such testing was an important component of an overall evaluation. It was, therefore, reasonable to require the parents of Thomas, as a condition to receiving benefits under the Act, to permit the school district to perform an evaluation of Thomas. *See, Vander Malle v. Ambach*, 673 F.2d 49 (2nd Cir.1982).

4. The regulation was initially promulgated by the Secretary of Health, Education and Welfare and appeared at 45 C.F.R. § 1210.306. However, the functions of the Secretary of Health, Education and Welfare with respect to the Act were transferred to the Secretary of Education, Pub.L. No. 96-88 § 601, 93 Stat. 668. The regulation in issue, along with scores of other

EHCA which required "that States maximise the potential of handicapped children 'commensurate with the opportunity provided to other children.'" *Rowley, supra* at ——, 102 S.Ct. at 3042, *quoting*, 483 F.Supp. 528 at 534.

The regulation and the lower court's opinion antedated the Supreme Court's opinion in *Rowley*. This Court therefore deems it appropriate to remand this issue to the district court for further consideration in light of the pronouncements in *Rowley*.[5]

In accordance with this opinion, the judgment below is AFFIRMED in all respects except that portion requiring the school district to provide extracurricular activities to Thomas which is VACATED and REMANDED for further consideration.[6] Each party shall pay its own costs.

Bernard BROWN-BEY,
Petitioner-Appellant,

v.

UNITED STATES of America, et al.,
Respondents-Appellees.

No. 83-1439.

United States Court of Appeals,
Seventh Circuit.

Submitted Oct. 14, 1983.*

Decided Nov. 1, 1983.

Prison inmate filed amended petition for writ of habeas corpus, raising numerous contentions relating to, inter alia, prison disciplinary proceeding. The United States District Court for the Southern District of Illinois, James L. Foreman, Chief Judge, granted defendants' motion to dismiss or, in alternative, for summary judgment. Inmate appealed. The Court of Appeals, Cummings, Chief Judge, held that: (1) magistrate correctly dismissed Privacy Act claim against individual; (2) requiring inmate to leave prison disciplinary hearing during testimony of assault victim did not violate inmate's right to confront his accuser; (3) evidence was sufficient to sustain prison disciplinary committee's finding that inmate was guilty of assaulting fellow inmate; (4) inmate was not entitled to hearing before being transferred from one correctional facility to another; (5) magistrate did not abuse his discretion in not holding hearing on defendants' summary judgment motion; (6) district court did not abuse its discretion in not ruling on inmate's discovery motion before granting defendants' motion to dismiss or for summary judgment; and (7) though trial court abused its discretion in failing to rule on inmate's request for appointment of counsel before ruling on defendants' motion to dismiss or for summary judgment, such error was harmless, given clear lack of merit in inmate's case.

Affirmed.

1. Records ⇐31

Privacy Act authorizes private civil actions for violations of its provisions only against an agency, not against any individual. 5 U.S.C.A. § 552a(g)(1).

was thereafter transferred to Title 34 and redesignated. 45 Fed.Reg. 77368 (1980).

5. This last issue is the exception previously alluded to wherein application of the Rehabilitation Act could provide a resolution different from that achieved by application of the EHCA. See 34 C.F.R. § 104.37 (1982). The lower court is free to address this issue on remand.

6. *Amicus curiae* has briefed the issue of attorney fees. In light of the remand, the attorney fee issue is not ripe for final resolution.

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Rule 34(a), Fed.R.App.P.; Circuit Rule 14(f). No such statement having been filed, the appeal has been submitted on the briefs and record.

FILED

JAN 3 1984

JOHN P. HEHMAN, Clerk

Nos. 81-3586, 81-3595

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

THOMAS M. RETTIG, et al.,	)	
	)	
Plaintiffs-Appellants, Cross-Appellees,	)	
	)	
v.	)	ORDER
	)	
KENT CITY SCHOOL DISTRICT,	)	
	)	
Defendant-Appellee, Cross-Appellant,	)	
	)	
and	)	
	)	
KENNETH CARDINAL, et al.,	)	
	)	
Defendants-Appellees.	)	

BEFORE: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge*

Upon due consideration, the Court concludes that rehearing in this matter is not warranted and, accordingly, the appellants' motion is hereby denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman
Clerk

*Hon. John Feikens, United States District Judge for the Eastern District of Michigan, sitting by designation.

FILED
FEB 7 1984
JOHN P. HEHMAN, Clerk

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	)	
KENT CITY SCHOOL DISTRICT,	)	
	)	
Defendant-Appellee, Cross-Appellant,	)	
	)	
and	)	
	)	
KENNETH CARDINAL, et al.,	)	
	)	
Defendants-Appellees.	)	

BEFORE: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge*

Appellant's motion for reconsideration of the Court's order denying rehearing is hereby denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman, CLERK

*Hon. John Feikens, Chief Judge, United States District Court for the Eastern District of Michigan, sitting by designation and assignment.

Thomas M. RETTIG, et al., Plaintiffs,

v.

KENT CITY SCHOOL DISTRICT, et al., Defendants.

Civ. A. No. C79-2234.

United States District Court, N. D. Ohio, E. D.

April 24, 1981.

Opinion After Trial Aug. 25, 1981.

In action for, inter alia, alleged violations of Education of the Handicapped Act and Rehabilitation Act, the District Court, Ann Aldrich, J., held that: (1) there was no valid claim that city school district refused to provide educational opportunity for 1971–1974 as alleged; (2) it was not meant that school system would have to provide any and all services that might be beneficial or that school must experiment with every new teaching technique that might be suggested, and school cannot spend exorbitant amount on one child at expense of others; (3) under evidence, school district tried very hard to accommodate handicapped child's parents and provide good education for their son but found it difficult at times to do both, and evidence failed to establish that school system failed child; (4) under evidence, district's in-service program met requirements of Education of the Handicapped Act for in-service training of teach-

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ers, and parents of child were not "support personnel" entitled under the Act to in-service training; (5) district in failing to provide any after-school activities in which autistic child might participate failed to provide after-school activities on equal basis and was in violation of regulation; and (6) state would be ordered to immediately revise its standard, which allowed State Board of Education 60 days to render its decisions regarding impartial hearings under Education of the Handicapped Act, so as to comply with federal regulation.

Order in accordance with opinion.

1. Federal Civil Procedure ⇐361

Substitution of parties in their official capacity by adding as defendant person who had replaced named defendant in his official capacity as superintendent of school district was automatic pursuant to rule. Fed.Rules Civ.Proc. Rule 25(d), 28 U.S.C.A.

2. Federal Civil Procedure ⇐840

Motion requesting leave to add new cause of action for alleged new statutory violations would be denied out of consideration of fairness to defendants where motion was not filed until some days before date on which case was scheduled for trial.

3. Federal Civil Procedure ⇐839
Schools ⇐148

Both Education of Handicapped Act and Rehabilitation Act required exhaustion of administrative remedies prior to pursuing civil action in district courts, and allowance of amendment of complaint so as to review new educational programs developed for handicapped student in 1979–1980 and 1980–1981 without benefit of any administrative records would not be allowed. Education of the Handicapped Act, §§ 602 et seq., 614(a)(5), 615, 615(e), 20 U.S.C.A. §§ 1401 et seq., 1414(a)(5), 1415, 1415(e); Rehabilitation Act of 1973, §§ 2 et seq., 504, 29 U.S.C.A. §§ 701 et seq., 794.

Opinion After Trial

4. Schools ⇐148

Where school psychologist made initial determination that child could not substantially profit from any program of instruction available in public schools of city and, although exclusion application was not filed with state for its determination, the parents chose instead to enroll child in private schools, there was no valid claim that city school district refused to provide educational opportunity for 1971–1974 as alleged. Ohio R.C. § 3321.05 (Repealed); § 5127.01 (now § 5126.06).

5. Schools ⇐148

Education for All Handicapped Children Act mandates free and appropriate education to all handicapped children of school age. Ohio R.C. § 3321.05 (Repealed).

6. Schools ⇐148

An "appropriate education" for child as severely handicapped as child in case at bar was one which would give him reasonable chance to acquire skills he needed to function outside of institution, and it was not meant that school system would have to provide any and all services that might be beneficial, or that school must experiment with every new teaching technique that might be suggested, and, although school system has obligation to keep abreast of changing educational strategies and implement them where success may be demonstrated, school cannot spend exorbitant amount on one child at expense of others. Ohio R.C. § 3321.05 (Repealed); Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; Education of the Handicapped Act, §§ 602(18, 19), 612(5)(B), 20 U.S.C.A. §§ 1401(18, 19), 1412(5)(B).

See publication Words and Phrases for other judicial constructions and definitions.

7. Schools ⇐148

Under evidence in suit for, inter alia, alleged violations of Education of Handicapped Act and Rehabilitation Act, school district tried very hard to accommodate handicapped child's parents and provide good education for their son but found it difficult at times to do both, and evidence failed to establish that school system failed child. Education of the Handicapped Act,

§ 602 et seq., 20 U.S.C.A. § 1401 et seq.; Fed.Rules Civ.Proc. Rule 52, 28 U.S.C.A.; Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; 42 U.S.C.A. §§ 1981 et seq., 1983; U.S.C.A.Const.Amends. 5, 14.

8. Schools ⇐148

Major concern of Congress when it adopted in-service training as mandatory component in overall administration of appropriate programs of special education and related services was that most school systems and teachers had little or no experience with handicapped children. Education of the Handicapped Act, § 613(a)(3), 20 U.S.C.A. § 1413(a)(3).

9. Schools ⇐148

Under evidence, city school district's in-service program met requirements of Education of the Handicapped Act for in-service training of teachers, and parents of child were not "support personnel" entitled under the Act to in-service training. Education of the Handicapped Act, § 613(a)(3), 20 U.S.C.A. § 1413(a)(3).

See publication Words and Phrases for other judicial constructions and definitions.

10. Schools ⇐148

Where city school district did not provide any after-school activities in which autistic child might participate, but did provide such activities for nonhandicapped students, it failed to provide after-school activities on equal basis and was in violation of regulation. Education of the Handicapped Act, § 613(a)(3), 20 U.S.C.A. § 1413(a)(3).

11. Schools ⇐148

Evidence in suit for, inter alia, alleged violations of Education of the Handicapped Act and Rehabilitation Act failed to establish that it was inappropriate not to furnish educational program for autistic child which would include occupational therapy on continuous basis. Education of the Handicapped Act, § 613(a)(3), 20 U.S.C.A. § 1413(a)(3).

12. Schools ⇐148

School district's assessments of group of children for purpose of compliance with funding legislation, where such assessments did not involve placement decisions for any specific child, and where group assessments were not utilized in development of any program for him, were not evaluations for which parental consent was required.

13. Schools ⇐148

School district's application for permission to do evaluation of handicapped child failed to comply with regulations insofar as application gave general description of possible procedures and instruments and did not give general description of procedures and instruments "that will be used."

14. Schools ⇐148

Evidence in suit for, inter alia, alleged violations of Education of the Handicapped Act and Rehabilitation Act failed to establish failure on the part of state to monitor local school districts for compliance with Education of the Handicapped Act, and, rather, established that state's policy was eminently reasonable. Education of the Handicapped Act, § 612(6), 20 U.S.C.A. § 1412(6).

15. Schools ⇐148

State was ordered to immediately revise its standard, which allowed State Board of Education 60 days to render its decisions regarding impartial hearings under Education of the Handicapped Act, so as to comply with federal regulation. Education of the Handicapped Act, § 612(6), 20 U.S.C.A. § 1412(6).

Edward G. Kramer, Floyd J. Miller, Cleveland, Ohio, Sheridan Neimark, Nat. Soc. for Autistic Children, Washington, D. C., for plaintiffs.

McDowall & Whalen, Dennis M. Whalen, Cuyahoga Falls, Ohio, for Kent City School Dist.

William J. Brown, Atty. Gen., Gary E. Brown and Richard W. Ross, Asst. Attys. Gen., Columbus, Ohio, for Ohio State Bd. of Ed. and Franklin Walter.

Dennis J. Murphy, Alan F. Berliner, Carlile, Patchen, Murphy & Allison, Columbus, Ohio, for Ohio Ass'n for Protection.

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MEMORANDUM AND ORDER

ANN ALDRICH, District Judge.

Pending in this action is plaintiffs' Motion to File a Second Amended Complaint. For reasons stated below, plaintiffs' motion is granted in part and denied in part.

In their Second Amended Complaint, plaintiffs seek 1) to add as defendant Ms. Donna Lightel who has replaced the named defendant Kenneth Cardinal in his official capacity as Superintendent of the Kent City School District; and 2) to add a new cause of action alleging new violations of the Education of the Handicapped Act, 20 U.S.C. §§ 1401 *et seq.*, and the Rehabilitation Act of 1973, 29 U.S.C. § 794.

[1] With respect to the first proposed amendment, the Court finds this substitution of parties in their official capacity to be automatic pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. Therefore, the Complaint will be amended to include Donna Lightel as a defendant, in her capacity as acting Superintendent of the Kent schools.

[2] Plaintiffs' second request is denied. On April 10, 1981, some ten days before the date on which this case was scheduled for trial, plaintiffs filed this motion requesting leave to add a new cause of action. Any consideration of fairness to the defendants would lead this Court to deny such a request.

[3] There is, however, an even more important reason why the request must be denied. Both the Education of the Handicapped Act and the Rehabilitation Act require the exhaustion of administrative remedies prior to pursuing a civil action in the district courts. Section 615 of the Education of the Handicapped Act institutes specific procedures at the State and local levels which must be pursued. Subsection (e) of § 1415 provides as follows:

> Civil action; jurisdiction
>
> (e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) of this section shall be final, except that any party involved in such a hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) of this section shall be final, except that any party may bring an action under paragraph (2) of this subsection.
>
> (2) Any party *aggrieved by the findings and decision* made under subsection (b) of this section who does not have the right to an appeal under subsection (c) of this section, and any party *aggrieved by the findings and decision* under subsection (c) of this section, shall have the right to bring a civil action *with respect to the complaint presented* pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy . . . (Emphasis added)

It is the clear intention of this provision to limit the jurisdiction of the federal district courts to a review of issues already raised in administrative hearings. This restriction on the jurisdiction of the courts reflects a congressional recognition that educational questions, such as those associated with appropriate programs for handicapped children, lie in an area in which the courts lack both specialized knowledge and special experience.

The administrative hearings in this case dealt specifically with the educational program developed for Tommy Rettig during the 1978–1979 school year. As required under Section (a)(5) of the Act, 20 U.S.C. § 1414(a)(5), this program is revised each year to meet the changing requirements of the child. Plaintiffs now ask this Court to review the new educational programs developed for Tommy Rettig in 1979–1980 and 1980–1981 without the benefit of any administrative record. This Court is not of the opinion that considerations of alleged "judicial economy" can be permitted to circumvent clear congressional intent to limit the Court's jurisdiction. This Court is sympathetic to the plaintiffs' plight; however, the limited scope of this Court's jurisdic-

tional review has been explained, on numerous occasions, to both plaintiff's counsel and to plaintiffs. The fact that legal remedies are often slow to come does not confer jurisdiction upon this Court over the issues that plaintiffs now seek to add to their Complaint. Plaintiffs' Motion to Amend the Complaint to add a new cause of action is, therefore, denied. IT IS SO ORDERED.

ORDER

It is Ordered and Adjudged that the State defendant immediately revise its standard, 3301-5-16(D)(5)(b) so as to comply with the federal regulation.

IT IS FURTHER ORDERED that the defendant School District conduct a multifactored evaluation in strict compliance with 45 C.F.R. Section 121a.532. That evaluation will be incorporated in the new IEP to be formulated for the 1981-1982 school year. The Rettigs and an expert of their choice may participate in the development of that IEP.

IT IS FURTHER ORDERED that the Kent City School District provide at least one hour per week of extracurricular activities for Thomas Rettig in accordance with the new IEP.

IT IS FURTHER ORDERED that plaintiffs' request that the defendant School District be ordered to continue to provide Thomas Rettig with a free and appropriate education for seven additional years from age 22 to 29 is hereby denied.

IT IS FURTHER ORDERED that each party shall bear their own counsel fees and costs.

IT IS FURTHER ORDERED that the court's opinion and order filed on August 25, 1981 is hereby adopted as findings of fact and conclusions of law, in accordance with Rule 52, Federal Rules of Civil Procedure.

OPINION AFTER TRIAL

This matter is before the Court following trial and presentation of evidence. In accordance with Rule 52 of the Federal Rules of Civil Procedure, the Court herewith submits its Findings of Fact and Conclusions of Law.

PROCEDURAL HISTORY

This action, in part, is a judicial review of several administrative hearings held by the State of Ohio in accordance with provisions of the Education for All Handicapped Children Act of 1975 (EHA), 20 U.S.C. §§ 1401 *et seq.*

The administrative process was initiated in February of 1978 when the parents of Thomas Rettig filed a written request for an impartial due process hearing. The administrative hearing began on January 29, 1979, and continued on an interrupted schedule until its conclusion on April 4, 1979. The State-appointed Impartial Hearing Officer issued a decision on April 30, 1979, concluding that the school system was providing a free and appropriate education for Thomas Rettig.

The plaintiffs filed an appeal from this decision to the State Board of Education on May 7, 1979. The State Board of Education, on November 13, 1979, passed a resolution affirming the conclusion of the Impartial Hearing Officer. The present action was filed on November 30, 1979, essentially as an appeal from these administrative decisions pursuant to EHA and the Rehabilitation Act of 1973, 29 U.S.C. § 794.

On December 13, 1979, an amended complaint was filed naming four new defendants, including the State Board of Education, and alleging violations of the Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

THE ISSUES

The Court has limited this action to a review of the issues raised by agreement of the parties to the administrative hearing and the additional claims of unconstitutional denials of due process and equal protection, together with claims of State violations of the EHA. Specifically, those issues are:

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I. Plaintiffs' allegation that the refusal to permit Thomas Rettig to enroll in the Kent City School District in 1971 violated his rights under the due process and equal protection clauses of the United States Constitution.

II. Plaintiffs' allegation that defendants failed to provide a free and appropriate education for Thomas Rettig, in violation of the EHA:

A. The failure to provide Thomas Rettig with a twelve-month program of special education and related services;

B. The failure to provide in-service training on effective methods of teaching autistic children;

C. The failure to provide a multi-factored evaluation of Thomas Rettig;

D. The failure to provide nonacademic and extracurricular services and activities in such a manner as to afford Thomas Rettig an equal opportunity for participation in such services and activities;

E. The failure to provide occupational therapy services to Thomas Rettig.

III. Plaintiff's allegation that the State Board of Education failed to monitor and assure compliance with the law by the special education programs offered to Thomas Rettig by the Kent City School District.

IV. Plaintiffs' allegation that the State standards relating to the issuance of final orders in an administrative appeal violate the EHA on their face and in their application.

FINDINGS OF FACT

Plaintiff Thomas M. Rettig is a sixteen-year-old male child who is severely handicapped. In addition to displaying symptoms of the handicapping condition of autism, he is most likely mentally retarded. Since his school enrollment he has had periods of progress and periods of regression. Still he functions at a pre-academic level.

In 1970, when Tom was five years old, his father sought advice as to the educational prognosis of his son from defendant Michael Chrin, then a child psychologist with the Kent City School District. Mr. Chrin attempted unsuccessfully to administer several standardized psychological tests of Tom. He then recommended to Mr. Rettig that he consider some additional evaluations in the future.

In 1971, when Tom reached compulsory school age, the plaintiff Eva Rettig brought her son Tom to defendant Kent City School District's public school to enroll him. Dr. Geraldine Irvin, the school psychologist, again attempted to evaluate Tom to determine proper placement. This evaluation took approximately an hour and fifteen minutes to an hour and a half and included the administration of a standardized intelligence test, parental interview, behavior observations, matching and drawing tests, and visual discrimination instruments. At its conclusion, Dr. Irvin advised Mrs. Rettig that, in her opinion, the Kent City School District did not have any program available for Tom. Dr. Irvin informed Mrs. Rettig that it would be her recommendation that Tom be placed in Happy Day School, a state-supported school for the trainable mentally retarded. Dr. Irvin then consulted with Michael Chrin on her evaluation of Thomas Rettig. He agreed with her recommendation. This opinion was based, in part, on his own observations of Tom the previous year. Dr. Irvin then completed the required E-1 form to apply to the State Department of Education for its approval to exclude Tom from the Kent City School District in order to permit his enrollment in Happy Day.

Mr. and Mrs. Rettig, who apparently were familiar with the program at Happy Day, refused to consider the possibility of enrolling their son there and chose instead to place him in private nursery schools. When Dr. Irvin and Mr. Chrin became aware that the Rettigs had chosen a private school option, they did not file the E-1 application for exclusion.

In 1972, after a series of tests at Cuyahoga Community College, it was recommended that Tom be enrolled at Our Lady of the Elms School in Akron. Tom re-

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mained at Our Lady of the Elms until April 1974, when he entered the Severely and Multiply Impaired (SMI) unit of the Kent City School District.

These SMI classes had just been instituted the previous fall. They were housed at the University School, a private school for grades one through twelve, operated by Kent State University. The Rettigs first approached Michael Chrin in January 1974 about enrolling Tom in the SMI class, but were asked to wait until the spring when an additional aide would be available in the class.

During the summer of 1974, the Rettigs took Tom to the Judevine Center for Autistic Children in St. Louis, Missouri. The Judevine Center is a private institution whose primary purpose is to provide autistic children with the basic attention and motivation skills they need in order for them to function in public school classes. The Center also offers training sessions to both parents and teachers of autistic children.

At the Judevine Center, the Rettigs received three weeks of training in the Judevine method of intervention with autistic children. The Judevine method, as described by Rebecca Blackwell (one of plaintiffs' expert witnesses) stresses an intense one-on-one relationship between teacher and child, small classrooms, minimal distractions, and the use of negative reinforcements such as the "time-out box" and food denial.

The Rettigs were impressed with the program at the Judevine Center and the apparent progress Tom had made as a result. They conveyed their enthusiasm over the program to Dr. Robert Stanton, Superintendent of the Kent Schools. Consequently, the Kent City School District arranged for Tom's teacher Ms. Margaret Bell to attend the training program at the Judevine Center. Ms. Bell attended the three-week session in September of 1974. When she returned, she incorporated many of the Judevine techniques in her SMI class for the 1974–75 school year, which Thomas Rettig attended.

During the spring of 1975, Thomas Rettig was hospitalized in Henrotin Hospital in Chicago under the care of Dr. Theron Randolph. During this hospitalization, Dr. Randolph determined that some of Tom's behavioral problems could be attributed to allergic reactions to certain food stuffs, among them, wheat, corn, chocolate, beef, and sugar. He prescribed a strict dietary regimen which required Mrs. Rettig to maintain a rotating menu of foods for Tom so that no item was repeated within a four-day period. Mrs. Rettig spent the summer of 1975 conducting her own allergy tests with Tom to determine his reaction to other foods.

Although the Rettigs had initially been very pleased with Kent's SMI program, during the 1975–76 school year conflicts began to arise between the Rettigs and Ms. Bell over her program of instruction.

The new dietary needs of Tom caused one problem between Ms. Bell and Mrs. Rettig over a class activity that permitted the children to prepare and eat lunch once a week at Ms. Bell's home. Although Tom could participate in setting the table, preparing the food, etc., he often could not eat any of the foods offered. His own meal was prepared at home by Mrs. Rettig, and she delivered it to him at school each day at lunch time. Because denial of food had been used as a negative reinforcement for Tom, Mrs. Rettig worried that Tom would assume he was being punished when he was not permitted to eat the meal he had helped prepare.

Mrs. Rettig also objected to the number of field trips Ms. Bell had planned for the class. In Mrs. Rettig's opinion this was a waste of regular school time. She also insisted that Tom was allergic to bus fumes and therefore could not travel with the class.

These conflicts eventually culminated in a confrontation between Mrs. Rettig and Ms. Bell, and the Rettigs subsequently withdrew Tom from the class in the spring of 1976.

Thomas Rettig was re-enrolled for the 1976–77 school year, but he was transferred to the SMI class of Ms. Linda Leavitt. [1668]

Mrs. Rettig soon expressed concern over Ms. Leavitt's teaching methods. Mrs. Rettig complained that Ms. Leavitt also wasted too much time in field trips. In addition, she did not properly employ Judevine techniques; she mis-used the time-out box; on one occasion, for example, an aide apparently went away and left Tom in the box. At another point during the year, Ms. Leavitt experimented with another form of negative reinforcement. Whenever Tom refused to cooperate in his lessons, Ms. Leavitt would walk away and work with another child, explaining to Tom that when he was ready to work he should tell her so. However, Ms. Leavitt was unable to determine whether or not this would have been an effective teaching technique with Tom since it was discontinued after a week and a half at Mrs. Rettig's request.

During the summer of 1977, Thomas Rettig attended a summer school program provided by the Kent State University Department of Special Education. Much of the general program dealt with foods and nutrition so Tom's participation was limited. However, Mrs. Rettig volunteered to work with Tom's teacher for the summer, Ms. Susan Taylor.

Ms. Taylor worked well with Mrs. Rettig and Tom, so well, that Mrs. Rettig submitted a letter of recommendation on behalf of Ms. Taylor to the Kent City School District. Ms. Taylor was hired for the following fall and was Tom's teacher during 1977–78.

During the summer of 1978, Tom was enrolled in a program sponsored by the University. He also attended a camp for handicapped children.

In September 1978, the special education classes housed at the University School were moved to public school buildings. Tom's class was moved to Longcoy School, an elementary school located two blocks from the Rettig's home. Tom's class was moved to Longcoy, as opposed to some other school in the district, because of its proximity to Tom's residence. Mrs. Rettig had complained about the inconvenience of having to bring Tom's lunch to school every day. At Longcoy, Tom could walk to and from school; he could walk home for lunch.

Because the SMI classes were located in a regular public school during the 1978–79 school year, Tom was now afforded some opportunity for structured interaction with non-handicapped students. He attended music, art, and physical education classes with non-handicapped students. He also attended the first half hour of a normal fourth grade class, accompanied by an aide. He shared lunch and recess periods with non-handicapped students.

During the summer of 1979, Dr. William Bricker of Kent State's Special Education Department offered a program specifically designed for Tom, but the Rettigs refused to enroll him.[1]

CONCLUSIONS OF LAW

I. *Allegation of unconstitutional denial of educational opportunity—1971–74:*

[4] The plaintiffs claim that Thomas Rettig was denied admission to the school district of his residence, and that the alleged denial of admission violated the plaintiffs' constitutional rights to due process and equal protection.

In 1971 when Tom first attempted to enroll in public school, there was no comprehensive statutory scheme mandating the education of handicapped children. What was in existence in 1971 was a statutory scheme whereby local school districts could lawfully exclude children whose handicaps prevented them from participating in regular school programs.

In 1971, Sections 3321.05 and 5127.01 of the Ohio Revised Code were applicable. Section 3321.05 provided in part:

> A child of compulsory school age may be determined to be incapable of profiting by further instruction . . .

1. The summer programs at Kent State provided in 1977, 1978, and 1979 offered three hours of instruction per day for five weeks or more at no cost to the parents.

> . . . the capacity of a child to benefit substantially by further instruction shall be determined with reference to that available to the particular child in the public schools of the district in which he resides . . .

Section 5127.01 provided in pertinent part:

> The chief of the division of mental retardation and developmental disabilities, with the approval of the director of mental health and retardation, shall establish in any county or district a training center or workshop, residential center, and other programs and services for the special training of mentally retarded persons, including those who have been adjudged by the proper authorities to be eligible for enrollment in public schools under section 3321.01 or 3321.05 of the Revised Code and who are determined by the division of mental retardation and developmental disabilities to be capable of profitting by specialized training . . .

In *Cuyahoga County Association for Children and Adults v. Essex*, 411 F.Supp. 46 (N.D.Ohio 1976), this Court (Judge Green) held that these provisions of the Ohio Revised Code which provided for the exclusion of some mentally handicapped children did not violate any constitutional guarantees. The Court did object, however, to some aspects of the process by which the State of Ohio excluded these children:

> . . . Absent a requirement of notice of the grounds upon which dismissal is being sought, a right to review the material to be submitted in support of such application and response thereto or supplement the same and some assurance that all pertinent information will be placed before the decision makers, the required conference is a hollow formality . . . Due process requires that a child whose educational opportunity is to be affected be afforded equal opportunity with school authorities to make a presentation regarding classification or dismissal. *Ibid* at 58–59.

Plaintiffs complain that none of these procedural safeguards were afforded them.[2] However, the evidence in this case leads to the inescapable conclusion that the Kent City School District never actually excluded Tom. Dr. Irvin, the school psychologist, made an initial determination that Tom could not substantially profit from any program of instruction available in the Kent public schools. She discussed her conclusion with Mrs. Rettig. Dr. Irvin went so far as to fill out the exclusion application which, under ORC § 3321.05, must be filed with the State for its determination, but this application, known as the "E–1 form", was never filed. The Rettigs chose instead to enroll Tom in private schools. This Court cannot speculate as to what procedures might have been followed had the exclusion process actually been pursued by the School District, nor can it speculate as to what standards for exclusion might have been applied. Since the plaintiffs elected to obtain educational placement in a private school, there cannot now be a valid claim that the Kent City School District refused to provide an educational opportunity from 1971–1974 as alleged in the Amended Complaint.

II. *Allegation of failure to provide an "appropriate" education:*

Plaintiffs have charged defendants with violations of the EHA and Section 504 of the Rehabilitation Act of 1973. Although these form separate bases of jurisdiction, the discussion in this opinion will focus upon the provisions of the EHA. As the regulations promulgated under Section 504 indicate, a school system will provide the free and appropriate education and procedural safeguards required under Section 504 by complying with the EHA. 34 C.F.R. §§ 104.33(b)(2) and 104.36.

[5] The Education for All Handicapped Children Act mandates a "free and appropriate education" to all handicapped chil-

2. They also contend that Thomas Rettig did not fall within the definition of a child ". . . incapable of profitting by further instruction . . ."

dren of school age.[3] Unfortunately, Congress did not supply much in the way of substantive content to the concept of an "appropriate" education. Instead, Congress emphasized the uniqueness of each handicapped child's educational requirements and defined appropriate education as "special education and related services . . . provided in conformity with the individualized education program". 20 U.S.C. § 1401(18). The individualized education program (IEP) is developed by the parents and educators working together and states with some degree of precision the child's present level of performance, the objectives of his program and the services that will achieve them, and objective criteria for determining success. *Id.* § 1401(19). To ensure that the IEP accurately reflects the needs of the child, the Act requires a multifactored evaluation so that no single procedure, such as a standardized IQ test, is relied on exclusively in determining the child's abilities.

For purposes of determining placement, the Act sets out a second criterion in addition to appropriateness: "[T]o the maximum extent appropriate, handicapped children . . . are [to be] educated with children who are not handicapped." 20 U.S.C. § 1412(5)(B). Thus it is clear that a major emphasis of the EHA is to "mainstream" handicapped children.

In discussing the goals of the EHA, the Senate Report states: "With proper education services, many [handicapped children] would be able to become productive citizens, contributing to society instead of being forced to remain burdens. Others, through such services, would increase their independence, thus reducing their dependence on society". S.Rep.No.94-168, 94th Cong., 1st Sess., reprinted in 1975 U.S.Code Cong. & Ad.News 1425, 1433.

[6] Therefore, this Court concludes that an "appropriate" education for a child as severely handicapped as Thomas Rettig is one that gives him a reasonable chance to acquire the skills he needs to function outside of an institution. This does not mean that the child deserves a perfect education. Indeed, it is unlikely that any child, handicapped or otherwise, ever receives a perfect education. It does not mean that a school system has to provide any and all services that might be beneficial. It does not mean that the school must experiment with every new teaching technique that may be suggested.

Despite the contention of the plaintiffs that money is no object under EHA, the courts, in general, have not adopted that approach. See *Battle v. Commonwealth of Pennsylvania*, 629 F.2d 269 (3d Cir. 1980); *Rowley v. Board of Education*, 483 F.Supp. 528 (S.D.N.Y.1980), aff'd, 632 F.2d 945 (2d Cir. 1980); *Pinkerton v. Moye*, 509 F.Supp. 107 (W.D.Vir.1981); and, by analogy, *Pennhurst v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981). It hardly needs to be stated that educational funding is not unlimited, and a school cannot spend an exorbitant amount on one child at the expense of all its other handicapped children. But the school system does have an obligation to keep abreast of changing educational strategies and implement them where success may be demonstrated.

[7] None of these fine goals lend much guidance to this Court in reviewing the educational requirements of Thomas Rettig. Because of his complicated handicapping conditions of autism and retardation, and because no multi-factored evaluation of Tom exists, it is almost impossible to accurately determine what his potential is, even if that were a proper role for this Court. The plaintiffs' own experts have presented conflicting opinions as to what they believe an appropriate education for Tom entails.

Rebecca Blackwell of the Judevine Center and Dr. William Bricker of Kent State University both counsel a classroom model. The classroom model revolves around the view that the autistic child has very little motivation to learn and is easily distracted. It stresses small classrooms, one-on-one teaching, and use of negative reinforcements.

3. EHA was passed by Congress in 1975 and its statutory provisions became effective as of the 1976-77 school year. Regulations under the Act were not promulgated until 1977.

Dr. Louis Brown, Dr. Ann Donnellan and Ms. Alison Ford of the University of Wisconsin represent the view that the autistic child does not generalize, *i.e.*, that what he learns in the classroom he does not know how to apply in the practical environment. This functionalist model stresses moving out of the classroom.

The Kent City School District began with the classroom model. The District even sent Tom's teacher Ms. Bell to the Judevine Center for training. To the extent that Tom's teachers have attempted to take him out of the classroom, they have been frustrated by the Rettigs' insistence first, that field trips are a waste of time and second, that Tom cannot ride a bus, swim in a pool, or have a meal away from school because of his allergies.

In fact, it appears to the Court that many of the efforts of Tom's teachers and the School District have been frustrated by the constant intrusions of Mrs. Rettig. The Court appreciates the concern these parents have for their son. It borders on heartbreak to see parents so necessarily involved in the education of a child. But if the Kent City School District is confused as to just exactly what the Rettigs expect in the way of an education for Tom, then the Court can appreciate its position also.

For example, the Rettigs' expert witness Dr. Louis Brown testified that Tom's education ought to be provided with age-appropriate peers, *i.e.*, other sixteen-year-olds. The Rettigs now ask this Court to order the School District to move Tom's class to the high school. Yet Tom's class was originally placed at Longcoy School at the parents' request so that he could walk to school. He could not walk to the high school.

Dr. Brown recommends that Tom be taught skills in the environment in which it is most appropriate for them to be performed, like parks, restaurants and other public buildings. Yet Tom's parents have consistently in the past objected to any trips outside the school.

Dr. Brown, Dr. Ann Donnellon, and Alison Ford all stressed that Tom receive instruction in functional skills such as crossing the street, using public transportation, using elevators. Yet Tom's teacher spent a considerable amount of time teaching Tom to write his name cursively at the parents' request.

The record does not support plaintiffs' picture of an obstinate and uncaring school system, but rather one that has tried very hard to accommodate the Rettigs and provide a good education for their son, but finds it difficult at times to do both.

Many of the plaintiffs' experts base their opinion that the education provided to Tom by the Kent City School District was inappropriate on the fact that Tom has made little progress. Yet it is also clear from their testimony that children such as Tom are extremely hard to reach. No one can guarantee results with these children. Dr. Donnellon testified that autistic children, like Tom, are rote ritualistic—yet their mental retardation makes it necessary to repeat a thing in order for them to retain it. Thus, teachers are often caught in the bind of contributing to the very problem they seek to correct.

This Court is unable to declare that the school system has failed Tom. The progress reports and the testimony of Tom's parents and teachers indicate that he has gained some social skills and some self-help skills, but he fails at academic tasks. In terms of Tom's own needs, it is apparent to this Court that academics ought to be secondary because if Tom is going to escape institutionalization, he needs to master some very basic self-help skills.

A. Summer School:

Most of the experts, including defendant KSCD's expert Christopher Matey, Low-Incidence Coordinator for the Greenhills-Forest Park Board of Education, agree that some type of summer program would be beneficial to Thomas Rettig. However, the issue is not whether it might be beneficial but whether a summer school program is a necessary component of an appropriate education for Tom. In the opinion of this Court, it would be appropriate if it would prevent significant regression of skills or

knowledge retained by Tom so as to seriously affect his progress toward self-sufficiency.

The record indicates that Thomas Rettig was offered and did attend summer school during the summer of 1978. For that summer session, Tom's teacher Sue Taylor reviewed his 1977–78 IEP with his summer school teacher so that her instruction would be consistent with his regular school program. Nevertheless Ms. Taylor testified that despite the 1978 summer experience, Tom exhibited signs of regression at the beginning of the 1978–79 school year. Mrs. Rettig herself testified that Tom's periods of regression do not necessarily occur during the summer but are a year-round phenomenon. None of the experts who testified had any actual knowledge of Tom's regressive tendencies.

On the basis of this record, the Court is unwilling to order a summer school program for Thomas Rettig. However, if on the basis of a multi-factored evaluation, a new IEP for Tom called for summer school, the Court would expect the Kent City School District to offer that program and would expect the State of Ohio to provide funding.[4]

B. In-Service Training:

[8] In-service training is a mandatory component in the overall administration of appropriate programs of special education and related services. 20 U.S.C. § 1413(a)(3) provides that:

> ... (A) the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational, instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained and effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects ...

The legislative history regarding the issue of in-service training demonstrates that Congress' major concern when it adopted this requirement was that most school systems and teachers had little or no experience with handicapped children:

> ... If the integration of handicapped children into the classroom is to be accomplished, several important changes must take place ... A teacher, who will be responsible for the management of the handicapped children in [the] classroom ...
>
> The Committee is aware that there is a shortage of fully qualified personnel trained to serve all handicapped in educational programs. Therefore, the Committee has determined that a program's continuous in-service training be undertaken to provide general and support personnel with basic requirements needed to serve handicapped children in the classroom.

1975 U.S.Code Cong. & Ad.News, 1457.

[9] However, the Kent City School District had had its SMI programs in operation for two years already. According to the testimony of Dr. Donnellon, this was years before public schools anywhere else in the country were offering programs for autistic children.

There is testimony in the administrative record, as well as supplemental evidence elicited at trial, concerning workshops, conferences, and other activities which employees of the school system attended, all with the encouragement and the funding of the school system. Internal staff meetings at which the teachers can discuss problems and exchange ideas are almost a daily occurrence among the members of the special education department of the Kent schools. When the SMI classes were moved from University School to public school buildings, meetings were conducted by Dr. Chrin with the entire staff in those buildings to explain

4. See this Court's Memorandum and Order dated September 15, 1980, on the class action issue.

the special needs of the handicapped students. Mr. Chrin works closely with his teaching staff and is always available to make suggestions or help work out a new teaching strategy. Although Mr. Chrin is not an expert in autism, as director of the program at Kent since its inception in 1974, he has had considerable experience in working with these children. He does observe his teachers often and does provide them with feedback on their performance.

Plaintiffs contend that none of these in-service activities included immediate implementation under supervised conditions, nor were any of the teachers ever tested on their new knowledge. However, it does not appear to this Court that it is necessary to treat these teachers like recalcitrant children. All of the teachers who testified appeared to be responsible dedicated professionals. They showed tremendous concern over the education of Thomas Rettig. They do need some supervision and they do need access to new information and new techniques. This Court is satisfied that the Kent City School District's in-service program meets these requirements.

Secondly, plaintiffs ask the Court to include "parents" within the meaning of "support personnel" and order the School District to provide in-service training for Mr. and Mrs. Rettig. On its face, the statute is not clear as to what persons were included in "support personnel". However, the legislative history suggests that the term refers to other professional staff employed by a school system:

> . . . The supportive service should be provided by trained occupational therapists, speech therapists, psychologists, social workers and other appropriately trained personnel.

1975 U.S.Code Cong. & Adm.News 1457. This Court does not find that it includes parents.

C. Extracurricular Activities and Related Services:

[10] Although the Act itself does not specifically address extracurricular activities and related services, regulations promulgated under its auspices do. 45 C.F.R. § 121a.306 provides as follows:

> (a) Each public agency shall take steps to provide non academic and extracurricular services and activities in such a manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

Extracurricular activities are offered to non-handicapped students to provide them with experiences outside the realm of their normal classroom activities. It appears to the Court that plaintiffs' latest set of experts (Dr. Brown, Dr. Donnellon, and Alison Ford), in emphasizing moving Tom out of the classroom, have essentially defined his whole education in terms of extracurricular activities. It then becomes difficult to justify additional time spent with Tom repeating the same kinds of experiences he gets during his normal school day. It would not be the same kind of enrichment that non-handicapped students derive from extracurricular activities. Of course, Tommy would benefit from the extra hour or two per week just as he might benefit from the constant instruction available at a residential school.

However, the education that Tom received between 1976 and 1979 was primarily a classroom experience. In conjunction with the classroom experience, the Kent City School District did not provide any after school activities in which a child like Thomas Rettig might participate, although the School District did provide such activities for its non-handicapped students. It therefore failed to provide after school activities on an equal basis, and has been in violation of 45 C.F.R. § 121a.306.

D. Occupational Therapy:

This issue of occupational therapy for Thomas Rettig first arose in discussions over the 1976–77 IEP. Specifically, this involves a technique known as sensory integrative therapy, developed by a Dr. A. G. Ayers in California. At that time, the Kent City School District did not employ an occupational therapist; however, Mr. Chrin did obtain consultation services. During the 1977–78 school year, Ms. Cathy Pierce, an

occupational therapist with the Mid-Eastern Ohio Special Education Regional Resource Center (MEO–SERRC), provided occupational therapy services on a weekly basis. Tom was not provided these services because the Rettigs refused to grant permission to have Tom evaluated. However, Philippa Campbell, an occupational therapist at Children's Hospital in Akron, Ohio who had evaluated Tom at the Rettigs' request, did instruct Ms. Taylor, Tom's teacher, in therapy techniques to use with Tom. According to Ms. Campbell's testimony, occupational therapy can be administered effectively by a lay person with adequate instruction.

In December of 1978, the Kent City School District hired Lorraine Lowe, an experienced qualified occupational therapist. Ms. Lowe evaluated Thomas Rettig, recommended that he receive sensory integrative therapy and testified at the administrative hearing that as soon as she completed her evaluations of the special education children, she would begin therapy sessions with Tom.

[11] Plaintiffs argue that this issue is not yet moot, however, since it goes to the issue of appropriate relief, specifically compensatory education and also to the issue of summer school. Plaintiffs contend that occupational therapy, like medical treatment, should be administered continuously until the child is cured. This does not permit a three-month hiatus in services over the summer. Plaintiffs' expert Philippa Campbell testified that "[t]he standard model for occupational therapy as well as other therapies is that therapy is provided until such point as a child no longer requires it and that it is provided continuously." P. Campbell, Tr. 154 [February 21, 1979]. Ms. Lowe testified that in her private practice in New York, she and her partner, an Ayers' faculty member, did not treat children during the summer. Neither witness testified as to how long Thomas Rettig might require therapy. Based on this evidence, the Court finds that an educational program for Thomas Rettig which does not include occupational therapy on a continuous basis is not necessarily "inappropriate".
[1096]

E. A Multi-factored Evaluation:

[12] Plaintiffs' allegation with respect to this issue has three components: first, that the Kent City School District has failed to provide a publicly-financed medical evaluation of Tom; second, that the Kent City School District has conducted evaluations without obtaining parental permission; and third, that the information made available to parents when permission is sought is inadequate.

The administrative record is clear that the Kent City School District did not provide, either before or after Thomas Rettig's initial placement, a publicly paid for, in-depth medical evaluation. Plaintiffs contend that had such a medical evaluation been completed in 1974 prior to Tom's placement in SMI class, as required, his allergic reaction to certain foodstuffs would have been discovered a year earlier. They further contend that since Tom's allergies interfere with his ability to learn, the practical effect of the defendants' failure was to deny Tom the benefit of a year of schooling. However, the applicable standard in 1974 merely stated that "[a]ll children being considered shall be examined by a licensed physician for initial placement . . ." *Comprehensive Plan for the Education of the Handicapped*, adopted July 1, 1973, p. 23. Since the Rettigs had to take their son to Chicago in order to obtain the allergy treatment outlined by Dr. Theron Randolph, it may be assumed that this treatment was not available locally. In fact, upon examination of Dr. Randolph's methods it taxes the credulity of this Court to believe that a standard medical examination by a local physician would [illegible] vered Tom's condition.

State regulations provide:

1. The parents shall be notified of intent to identify and evaluate their child suspected of needing a special education program or related service and shall be provided an opportunity to submit any data relevant to the subsequent evaluation of their child.

2. Written parental permission shall be obtained before evaluation is initiated.

3301-51-18 (B). *Standards for Special Education.*

The administrative record indicates at least two instances in which standardized testing of all the children in the SMI classes, including Tom, were undertaken by the Kent school system without notifying or requesting permission of the Rettigs, one in June of 1977, the other in May or June of 1978. It was the testimony of Mr. Chrin that these particular procedures were not administered for the purpose of determining an appropriate educational placement for any particular child but rather that these group assessments were a necessary component of the District's application for federal monies to help fund the program. The State standards define an "evaluation" for which parental consent is required as:

> . . . those activities involved in gathering data about a *specific* child, including such methods of testing and interviewing, *for the purposes of determining an appropriate educational placement for the child* . . . [Emphasis added.]

3301-51-16 (A)(4)(m), *Standards for Special Education.*

These assessments of a group of children for the purpose of compliance with funding legislation did not involve placement decisions for any specific child, including Tom. Additionally, Ms. Taylor, Tom's teacher 1977-79, testified that she did not utilize the group assessments in the development of any IEP for him. For these reasons, the Court finds no legal necessity to obtain permission of the Rettigs prior to conducting these assessments.

[13] When parental permission is sought by the Kent City School District, it must comply with the State regulations contained in 3301-15-18(B)(5). 3301-15-18(B)(5) lists ten items of information that must be provided to the parents prior to any evaluation of their child. The Rettigs have consistently refused to permit any evaluation of their son since 1976, alleging that the School District has failed to supply the requisite information.[5] In reviewing the application for permission to do an evaluation submitted to the Rettigs on September 13, 1978, the Court finds the application, for the most part, to be in compliance. It fails, however, as required by 3301-15-18(B)(5)(f) to give a "[g]eneral description of procedures and instruments that *will be used*," [Emphasis added.] Instead it provides a list of possible procedures and instruments, and to that extent, it is inadequate.

On the basis of the record in this case, there is considerable question as to whether the Rettigs would have permitted any evaluation of their son that included standardized tests. It is clear from her testimony at the administrative hearing that Mrs. Rettig firmly believes that no norm-referenced instrument is descriptive at all of her son's ability.

To some extent, it is true that autistic children are not testable. One of the primary characteristics of their handicap is that they do not seem to care to interact with other human beings. This lack of social behavior extends to parents, teachers, peers, etc., and to anyone attempting to administer a standardized test. They do not cooperate with the tester and thus, they may score much lower than their actual mental potential.

It is Mrs. Rettig's nightmare that the Kent City School District will use the results of standardized tests as the basis upon which to "force the parents to agree to place Tommy into a 169 program for retarded children", (such as Happy Day School.) See letter dated 11-22-79 from Mrs. Rettig

5. In 1976 prior to the adoption of the above-referenced regulations, Dr. Robert Robinson of MEO-SERCC did administer a psychological evaluation of Thomas Rettig for the Kent City School District. According to Dr. Robinson's report, this consisted of five different assessment instruments and observational data. During the administration of these tests, Tom's teacher was present in order to properly motivate Tom and properly interpret his responses. Inasmuch as "no single procedure was the sole criterion" for Dr. Robinson's final recommendation, this evaluation was "multi-factored".

to the Members of the State Board of Education.

However, it is clear to the Court from the expert testimony in this case that despite the problems associated with standardized tests, they can be used to gain certain information and insight into the capabilities of an autistic child and, in addition, provide an objective criterion for comparison in the future. The fact that norm-referenced procedures are used, in and of itself, does not render a multi-factored evaluation valueless.

III. *Allegation of failure to monitor compliance:*

[14] Plaintiffs produced only one witness on this issue, Dr. Samuel Bonham, Director of the Division of Special Education for the Ohio Department of Education. He testified that not only was Ohio the first state in the country to develop a comprehensive scheme for monitoring special education programs, but that Ohio's monitoring program is considered a model by other systems throughout the country. Based on that record, this Court cannot make a finding that the State has failed to monitor local school districts for compliance with EHA.

Plaintiffs contend that the very fact that the State Board of Education approved the decision of the Impartial Hearing Officer in this case demonstrates a failure to monitor. The Court finds this argument unpersuasive. Further, plaintiffs contend that the policy of the Ohio Department of Education to take no action against a school system once an impartial hearing has been requested is violative of the federal provision requiring states to monitor. See 20 U.S.C. § 1412(6).

Adoption of this view would require the State to impose sanctions before there has been a final determination as to whether a school system has, in fact, failed to comply with some aspect of the EHA. In light of the fact that the State's only sanction is to withdraw funds from the school district involved, and the obvious penalty that this would inflict on all of the district's handicapped children, the Court finds the State's policy to be eminently reasonable.

IV. *Allegation of violation of EHA by state standards regarding issuance of decisions on appeal:*

[15] The federal regulations pertaining to the procedural safeguards available under the EHA provide as follows:

> (a) The public agency shall insure that no later than 45 days after the receipt of a request for a hearing:
>
> (1) A final decision is reached in the hearing; and
>
> (2) A copy of the decision is mailed to each of the parties.
>
> (b) The State educational agency shall insure that not later than 30 days after the receipt of a request for a review:
>
> (1) A final decision is reached in the review; and
>
> (2) A copy of the decision is mailed to each of the parties.

45 C.F.R. § 121a.512

Neither of these provisions has been followed in this case. Subsection (a) was apparently abrogated by the parties themselves, who agreed to an interrupted trial schedule that eventually lingered on for four months, January to April, 1979. Subsection (b) was completely ignored by the State which failed to render a decision even within the 60 days permitted under State standards.[6] The Court can certainly appreciate the State's claim that this was an extremely complicated case, but 193 days far exceed the realm of reasonable delay.

Because of these delays, by the time this case reached the level of federal court review, the record was already very cold. A new IEP for Thomas Rettig was already being formulated. That IEP is not properly before this Court, since EHA requires ex-

6. Even if the Court takes into consideration the fact that Mrs. Rettig did not submit her brief until July 20, 1979, the State did not render its decision within 30, or even 60, days from that date.

haustion of administrative remedies.[7] Hence, this Court has found itself in the very uncomfortable position of reviewing an educational program that is no longer applicable. Such a review can hardly be deemed meaningful, at least not from Tommy Rettig's point of view.

The State defendant is ordered to immediately revise its standard, 3301-5-16(D)(5)(b) [which allows the State Board of Education 60 days to render its decisions reviewing impartial hearings] so as to comply with the federal regulation.

RELIEF

1. The defendant School District has previously petitioned this Court for permission to administer a multi-factored evaluation of Thomas Rettig. In the interests of defusing the conflict between the School District and the Rettigs, and ensuring that Thomas Rettig's education continues to be appropriate for his needs, the Court orders the School District to conduct a multi-factored evaluation in strict compliance with 45 C.F.R. Section 121a.532. That evaluation will be incorporated in the new IEP to be formulated for the 1981-82 school year. The Rettigs and an expert of their choice may participate in the development of that IEP.

2. The Kent City School District is further ordered to provide at least one hour per week of extracurricular activities for Thomas Rettig in accordance with the new IEP.

3. The State defendant, as indicated in a prior section of this opinion, is ordered to revise the time allowance in 3301-5-16(D)(5)(b) and to adopt a 30-day standard.

4. As for plaintiffs request that the defendant School District be ordered to continue to provide Thomas Rettig with a free and appropriate education for seven additional years from age 22 to 29, this Court would order compensatory education in an appropriate case. See, for example, *Campbell v. Grissett*, C.A. No. 79-M-277, (N.D. Ala. March 31, 1981); however, the fact pattern here is easily distinguishable.

5. In light of the fact that each of the parties has prevailed on some of the merits, this Court is not inclined to award counsel fees. Each party is to bear its own costs.

IT IS SO ORDERED.

7. See this Court's Order dated April 24, 1981.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 45202

JOHN P. HEHMAN
CLERK

TELEPHONE
(513) 684-2853
FTS 684-2853

March 6, 1984

Mrs. Eva O. Rettig
586 Francis Street
Kent, Ohio 44240

Re: Case Nos. 81-3586/81-3595
Thomas M. Rettig, et al,
v. Kent City School Dist., et al

Dear Mrs. Rettig:

The Court is in receipt of your notice of appeal to the Supreme Court of the United States. We are returning it to you herewith.

For your information, an appeal to the Supreme Court may be taken only in a few limited cases. These cases are prescribed by statute and some are set forth in 28 U.S.C. 1252 and 1254 (2). In all other cases, review of a decision of a United States Court of Appeals is by way of the petition for writ of certiorari filed in the Supreme Court. It appears that your case is one in which a petition for writ of certiorari should be filed. Additionally, when petitioning for writ of certiorari, no notice of appeal is filed anywhere.

The address for the Supreme Court is:

1 First Street, N.E.
Washington, D. C. 20543
(202) 252-3000

I hope that this information is helpful to you.

Very truly yours,

John P. Hehman, Clerk

By Kathy M. Preuitt
(Miss) Kathy M. Preuitt
Deputy Clerk

JPH:kmp
Enclosures
cc:
Mr. Edward G. Kramer
Mr. Dennis M. Whalen
Mr. G. Frederick Compton, Jr.
Mr. Gary E. Brown

EDUCATION OF THE HANDICAPPED
20 U.S.C. §§ 1401-1461

[P.L. 91-230, April 13, 1970, 84 Stat. 121; as amended by P.L. 93-380, August 21, 1974, 88 Stat. 580, by P.L. 94-142, November 29, 1975, 89 Stat. 773, by Pub. L. 95-561, November 1, 1978, 92 Stat. 2364, and by Pub. L. 98-199, December 2, 1983, 97 Stat. 1357.]

SUBCHAPTER I—GENERAL PROVISIONS

§ 1400. Congressional statements and declarations

Short title

(a) This chapter may be cited as the "Education of the Handicapped Act."

Findings

(b) The Congress finds that—

(1) there are more than eight million handicapped children in the United States today;

(2) the special educational needs of such children are not being fully met;

(3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children;

(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

Purpose

(c) It is the purpose of this chapter to assure that all handicapped children have available to them, within the time periods specified in Section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.

Pub. L. 91-230, Title VI, § 601, Apr. 13, 1970, 84 Stat. 175, amended by Pub. L. 94-142, § 3(a), Nov. 29, 1975, 89 Stat. 774 [reclassified as § 1400 in 1981].

§ 1401. Definitions

(a) As used in this chapter—

(1) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services.

EHLR EDITORIAL NOTE: Study of Behaviorally Disordered

Section 17 of Pub. L. 98-199, directs the Secretary to conduct a review and evaluation of the term "behaviorally disordered" and submit a report of that review and evaluation to the Congress within six months of the effective date of the law. This section of the public law will not be codified in the U.S. Code; however, it is reproduced here for reference purposes.

SEC. 17. (a)(1) The Secretary of Education shall either directly or by grant or contract, conduct a review and evaluation of the term "behaviorally disordered" as the use of such term relates to handicapped children, as defined in section 602(a)(1) of the Education of the Handicapped Act.

(2) The review and evaluation under this section shall involve the active participation of the parents of handicapped children.

(b)(1) Not later than six months after the date of the enactment of this Act, the Secretary shall submit to the Congress, for referral to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report of the review and evaluation required by this section, together with a detailed proposal for any legislation necessary to implement the recommendations of such review and evaluation.

(2) The report required under paragraph (1) shall include—

(A) the number of seriously emotionally disturbed children currently being served under the Education of the Handicapped Act, and the anticipated number of children and youth (by type of condition) in special and regular education who would be served under the Education of the Handicapped Act if the definition is changed;

(B) how the population of children currently served under such Act as "seriously emotionally disturbed" may be changed (particularly in terms of the severity of disability) if the term "behaviorally disordered" is substituted for the term "seriously emotionally disturbed";

(C) how a change in terminology will impact on the identification, assessment, types of special education and related services provided, and the availability of such services, if the change in terminology is made;

(D) how the settings in which special education and related services are provided may change if the change in terminology is made;

(E) how the change in terminology may affect the attitudes of, and the relationships among, parents, professionals, and children and youth;

(F) how the change in terminology will impact upon the training of professional personnel providing services under such Act; and

(G) a number of examples of seriously emotionally disturbed children who are currently effectively and ineffectively served.

(c) The Secretary is authorized to use funds appropriated for purposes of Part E of the Education of the Handicapped Act to carry out the purposes of this section.

(3).[*] The term "Advisory Committee" means the National Advisory Committee on the Education of Handicapped Children.

(4) The term "construction", except where otherwise specified, means (A) erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this chapter; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of the foregoing.

(5) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

(6) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(7) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(8) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other

* Former subsection (a)(2) was deleted; however, subsections (a)(3) — (a)(22) were not renumbered.

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public institution or agency having administrative control and direction of a public elementary or secondary school.

(9) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(11) The term "institution of higher education" means an educational institution in any State which—

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) is legally authorized within such State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however*, That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, he shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Commissioner shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of education or training offered.

(12) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(13) The term "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of handicapped children, or the dissemination of information derived therefrom, including (but without limitation) experimental schools.

(14) The term "Secretary" means the Secretary of Education.

(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

(18) The term "free appropriate public education" means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title.

(19) The term "individualized education program" means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such

child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

(20) The term "excess costs" means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting (A) amounts received under this subchapter or under title I or title VII of the Elementary and Secondary Education Act of 1965, and (B) any State or local funds expended for programs which would qualify for assistance under this subchapter or under such titles.

(21) The term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act.

(22) The term "intermediate educational unit" means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to handicapped children within that State.

(b) For purposes of part C of this title, "handicapped youth" means any handicapped child (as defined in section 602(a)(1)) who—

(1) is twelve years of age or older; or

(2) is enrolled in the seventh or higher grade in school.

NOTE: (a) Except as provided in subsection (b), the provisions of this Act shall take effect on the date of enactment of this Act.

(b)(1) To the extent that the amendments made by this Act to parts C, D, E, and G of the Education of the Handicapped Act prohibit or limit the use of funds, such amendments shall apply only to funds obligated after the date of enactment of this Act.

(2) As determined necessary by the Secretary of Education for purposes of providing services under the Education of the Handicapped Act pending the issuance of regulations implementing the amendments made by this Act, the Secretary shall provide financial assistance under parts C, D, E, and G of the Act as in effect on the day before the date of enactment of this Act until issuance of such regulations or March 1, 1984, whichever is earlier.

Pub. L. 91-230, Title VI, § 602, Apr. 13, 1970, 84 Stat. 175; amended by Pub. L. 94-142, § 4(a), Nov. 29, 1975, 89 Stat. 775, and by Pub. L. 98-199, § 2, Dec. 2, 1983, 97 Stat. 1357.

§ 1402. Office of Special Education Programs

(a) There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs which shall be the principal agency in the Department for administering and carrying out this Act and other programs and activities concerning the education and training of the handicapped.

(b)(1) The office established under subsection (a) shall be headed by a Deputy Assistant Secretary who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services. The position of Deputy Assistant Secretary shall be in grade GS-18 of the General Schedule under section 5104 of title 5, United States Code, and shall be a Senior Executive Service position for the purposes of section 3182(a)(2) of such title.

(2) In addition to such Deputy Assistant Secretary, there shall be established in such office not less than six positions for persons to assist the Deputy Assistant Secretary, including the position of the Associate Deputy Assistant Secretary. Each such position shall be in grade GS-15 of the General Schedule under section 5104 of title 5, United States Code."

Pub. L. 91-230, Title VI, § 603, Apr. 13, 1970, 84 Stat. 177; amended by Pub. L. 93-380, Title VI, § 612(a), Aug. 21, 1974, 88 Stat. 579, and by Pub. L. 98-199, § 3(a), Dec. 2, 1983, 97 Stat. 1357.

§ 1403. National Advisory Committee on Handicapped Children and Youth

(a) The Secretary shall establish in the Department of Education a National Advisory Committee on the Education of Handicapped Children and Youth, consisting of fifteen members, appointed by the Secretary. Not less than five such members shall be parents of handicapped children and the remainder shall be handicapped persons (including students), persons affiliated with education, training, or research programs for the handicapped, and those having demonstrated a commitment to the education of handicapped children.

(b) The Advisory Committee shall review the administration and operation of the programs authorized by this Act and other provisions of law administered by the Secretary with respect to handicapped children (including the effect of such programs in improving the educational attainment of such children) and make recommendations for the improvement of such programs. Such recommendations shall take into consideration experience gained under this and other Federal programs for handicapped children and, to the extent appropriate, experience gained under other public and private programs for handicapped children. The Advisory Committee may make such recommendations to the Secretary as the Committee considers appropriate and shall make an annual report of its findings and recommendations to the Secretary not later than June 30 of each year. The Secretary shall transmit each such report, together with comments and recommendations, to the Congress.

(c) There are authorized to be appropriated for the purposes of this section $200,000 for fiscal year 1984, and for each of the two succeeding fiscal years.

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Pub. L. 91-230, Title VI, § 604, Apr. 13, 1970, 84 Stat. 177, amended by Pub. L. 93-380, Title VI, § 613, Aug. 21, 1974, 88 Stat. 580; Pub. L. 94-273, §§ 3(14), 13(2), Apr. 21, 1976, 90 Stat. 376, 378, and by Pub. L. 98-199, § 4, Dec. 2, 1983, 97 Stat. 1358.

§ 1404. Acquisition of equipment and construction of necessary facilities

Authorization for use of funds

(a) In the case of any program authorized by this chapter, if the Secretary determines that such program will be improved by permitting the funds authorized for such program to be used for the acquisition of equipment and the construction of necessary facilities, he may authorize the use of such funds for such purposes.

Recovery of payments under certain conditions

(b) If within twenty years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to a grant or contract under this chapter the facility constructed ceases to be used for the purposes for which it was constructed, the United States, unless the Secretary determines that there is good cause for releasing the recipient of the funds from its obligation, shall be entitled to recover from the applicant or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

Pub. L. 91-230, Title VI, § 605, Apr. 13, 1970, 84 Stat. 177.

§ 1405. Employment of handicapped individuals

The Secretary shall assure that each recipient of assistance under this chapter shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this chapter.

Pub. L. 91-230, Title VI, § 606, as added Pub. L. 94-142, § 6(a), Nov. 29, 1975, 89 Stat. 795.

§ 1406. Grants for the removal of architectural barriers

(a) The Secretary is authorized to make grants and to enter into cooperative agreements with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act approved August 12, 1968 (Public Law 90-480), relating to architectural barriers.

(b) For the purposes of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

Pub. L. 91-230, Title VI, § 607, as added by Pub. L. 94-142, § 6(a), Nov. 29, 1975, 89 Stat. 795, and amended by Pub. L. 98-199, § 5, Dec. 2, 1983, 97 Stat. 1358.

§ 1407. Requirements for prescribing regulations

(a) For purposes of complying with section 431(b) of the General Education Provisions Act with respect to regulations promulgated under part B of this Act, the thirty-day period under such section shall be ninety days.

(b) The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act which would procedurally or substantively lessen the protections provided to handicapped children under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at IEP meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

(c) The Secretary shall transmit a copy of any regulations promulgated under this Act to the National Advisory Committee on the Education of the Handicapped concurrently with publication in the Federal Register.

Added by Pub. L. 98-199, § 6, Dec. 2, 1983, 97 Stat. 1359.

SUBCHAPTER II — ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

§ 1411. Entitlements and allocations

Formula for determining maximum State entitlement

(a)(1) Except as provided in paragraph (3) and in section 1419 of this title, the maximum amount of the grant to which a State is entitled under this subchapter for any fiscal year shall be equal to—

(A) the number of handicapped children aged three to twenty-one, inclusive, in such State who are receiving special education and related services;

multiplied by—

(B)(i) 5 per centum, for the fiscal year ending September 30, 1978, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(ii) 10 per centum, for the fiscal year ending September 30, 1979, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iii) 20 per centum, for the fiscal year ending September 30, 1980, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iv) 30 per centum, for the fiscal year ending September 30, 1981, of the average per pupil expenditure in public elementary and secondary schools in the United States; and

(v) 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States;

except that no State shall receive an amount which is less than the amount which such State received under this subchapter for the fiscal year ending September 30, 1977.

(2) For the purposes of this subsection and subsection (b) through subsection (e) of this section, the term "State" does not include Guam, American Samoa, the Virgin Islands, Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(3) The number of handicapped children receiving special education and related services in any fiscal year shall be equal to the number of such children receiving special education and related services on December 1 of the fiscal year preceding the fiscal year for which the determination is made.

(4) for purposes of paragraph (1)(B), the term "average per pupil expenditure", in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

(5)(A) In determining the allotment of each State under paragraph (1), the Secretary may not count—

(i) handicapped children in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 per centum of the number of all children aged five to seventeen, inclusive, in such state; and

(ii) handicapped children who are counted under section 241c-1 of this title.

(B) For purposes of subparagraph (A), the number of children aged five to seventeen, inclusive, in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

Distribution and use of grant funds by States for fiscal year ending September 30, 1978

(b)(1) Of the funds received under subsection (a) of this section by any State for the fiscal year ending September 30, 1978—

(A) 50 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) 50 per centum of such funds shall be distributed by such State pursuant to subsection (d) of this section to local educational agencies and intermediate educational units in such State, for use in accordance with the priorities established under section 1412(3) of this title.

(2) Of the funds which any State may use under paragraph (1)(A)—

(A) an amount which is equal to the greater of—

(i) 5 per centum of the total amount of funds received under this subchapter by such State; or

(ii) $200,000;

may be used by such State for administrative costs related to carrying out sections 1412 and 1413 of this title;

(B) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 1412(3) of this title.

Distribution and use of grant funds by States for fiscal years ending September 30, 1979, and thereafter

(c)(1) Of the funds received under subsection (a) of this section by any State for the fiscal year ending September 30, 1979, and for each fiscal year thereafter—

(A) 25 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) except as provided in paragraph (3), 75 per centum of such funds shall be distributed by such State pursuant to subsection (d) of this section to local educational agencies and intermediate educational units in such State, for use in accordance with priorities established under section 1412(3) of this title.

(2)(A) Subject to the provisions of subparagraph (B), of the funds which any State may use under paragraph (1)(A)—

(i) an amount which is equal to the greater of—

(I) 5 per centum of the total amount of funds received under this subchapter by such State; or

(II) $300,000;

may be used by such State for administrative costs related to carrying out the provisions of sections 1412 and 1413 of this title; and

(ii) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 1412(3) of this title.

(B) The amount expended by any State from the funds available to such State under paragraph (1)(A) in any fiscal year for the provision of support services or for the provision of direct services shall be matched on a program basis by such State, from funds other than Federal funds, for the provision of support services or for the provision of direct services for the fiscal year involved.

(3) The provisions of section 1413(a)(9) of this title shall not apply with respect to amounts available for use by any State under paragraph 2.

(4)(A). No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if—

(i) such local educational agency or intermediate educational unit is entitled, under subsection (d) of this section, to less than $7,500 for such fiscal year; or

(ii) such local educational agency or intermediate educational unit has not submitted an application for such

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funds which meets the requirements of section 1414 of this title.

(B) Whenever the provisions of subparagraph (A) apply, the State involved shall use such funds to assure the provision of a free appropriate education to handicapped children residing in the area served by such local educational agency or such intermediate educational unit. The provisions of paragraph (2)(B) shall not apply to the use of such funds.

Allocation of funds within States to local educational agencies and intermediate educational units

(d) From the total amount of funds available local educational agencies and intermediate educational units in any State under subsection (b)(1)(B) or subsection (c)(1)(B) of this section, as the case may be, each local educational agency and intermediate educational unit shall be entitled to an amount which bears the same ratio to the total amount available under subsection (b)(1)(B) or subsection (c)(1)(B) of this section, as the case may be, as the number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in all local educational agencies and intermediate educational units which apply to the State educational agency involved for funds under this subchapter.

Territories and possessions

(e)(1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 601(c) in an amount equal to an amount determined by the Secretary in accordance with criteria based on respective needs, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate amounts available to all States under this subchapter for that fiscal year. If the aggregate of the amounts, determined by the Secretary pursuant to the proceeding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of such jurisdictions shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount alloted to such jurisdiction for any fiscal year, or $35,000, whichever is greater.

Indian reservations

(f)(1) The Secretary is authorized to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts available to all States under this subchapter for that fiscal year.

(2) The Secretary of the Interior may receive an allotment under this subsection only after submitting to the Secretary an application which meets the applicable requirements of section 1414(a) of this title and which is approved by the Secretary. The provision of section 1416 of this title shall apply to any such application.

Reductions or increases

(g)(1) If the sums appropriated for any fiscal year for making payments to States under this subchapter are not sufficient to pay in full the total amounts which all States are entitled to receive under this subchapter for such fiscal year, the maximum amounts which all States are entitled to receive under this subchapter for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(2) In the case of any fiscal year in which the maximum amounts for which States are eligible have been reduced under the first sentence of paragraph (1), and in which additional funds have not been made available to pay in full the total of such maximum amounts under the last sentence of such paragraph, the State educational agency shall fix dates before which each local educational agency or intermediate educational unit shall report to the State educational agency on the amount of funds available to the local educational agency or intermediate educational unit, under the provisions of subsection (d) of this section, which it estimates that it will expend in accordance with the provisions of this subchapter. The amounts so available to any local educational agency or intermediate educational unit, or any amount which would be available to any other local educational agency or intermediate educational unit if it were to submit a program meeting the requirements of this subchapter, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies and intermediate educational units, in the manner provided by this section, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

Pub. L. 91-230, Title VI, § 611, Apr. 13, 1970, 84 Stat. 178; amended by Pub. L. 93-380, Title VI, §§ 614(a), (e)(1), (2), Aug. 21, 1974, 88 Stat. 580, 582; Pub. L. 94-142, §§ 2(a)(1)-(3), 5(a), (c), Nov. 29, 1975, 89 Stat. 773, 776, 794; Pub. L. 96-270, § 13, June 14, 1980, and by Pub. L. 98-199, § 15, Dec. 2, 1983, 97 Stat. 1357.

§ 1412. Eligibility requirements

In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

(1) The State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

(2) The State has developed a plan pursuant to section 1413(b) of this title in effect prior to November 29, 1975, and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

(A) there is established (i) a goal of providing full educational opportunity to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

(B) a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

(C) all children residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

(D) policies and procedures are established in accordance with detailed criteria prescribed under section 1417(c) of this title; and

(E) the amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Secretary.

(3) The State has established priorities for providing a free appropriate public education to all handicapped children, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

(4) Each local educational agency in the State will maintain records of the individualized education program for each handicapped child, and such program shall be established, reviewed, and revised as provided in section 1414(a)(5) of this title.

(5) The State has established (A) procedural safeguards as required by section 1415 of this title, (B) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(6) The State educational agency shall be responsible for assuring that the requirements of this subchapter are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency.

(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 1413 of this title.

Pub. L. 91-230, Title VI, § 612, Apr. 13, 1970, 84 Stat. 178; amended by Pub. L. 92-318, Title IV, § 421(b)(1)(C), June 23, 1972, 86 Stat. 341; Pub. L. 93-380, Title VI §§ 614(b), (f)(1), 615(a), Title VIII, § 843(b), Aug. 21, 1974, 88 Stat. 581, 582, 611; and by Pub. L. 94-142, §§ 2(a)(4), (c), (d), 5(a), Nov. 29, 1975, 89 Stat. 773, 774, 780.

§ 1413. State plans

Requisite features

(a) Any State meeting the eligibility requirements set forth in section 1412 of this title and desiring to participate in the program under this subchapter shall submit to the Secretary, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall—

(1) set forth policies and procedures designed to assure that funds paid to the State under this subchapter will be expended in accordance with the provisions of this sub-

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chapter, with particular attention given to the provisions of sections 1411(b), 1411(c), 1411(d), 1412(2) and 1412(3) of this title;

(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including section 241c-1 of this title, section 844a(b)(8) of this title or its successor authority, and section 1262(a)(4)(B) of this title, under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

(3) set forth, consistent with the purposes of this chapter, a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include the in-service training of general and special educational instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained, and effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and (B) adopting, where appropriate, promising educational practices and materials development through such projects;

(4) set forth policies and procedures to assure—

(A) that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this subchapter by providing for such children special education and related services; and

(B) that (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this subchapter) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this subchapter or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and (ii) in all such instances the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this subchapter for services to any child who is determined to be erroneously classified as eligible to be counted under section 1411(a) or 1411(d) of this title;

(6) provide satisfactory assurance that the control of funds provided under this subchapter, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this subchapter, and that a public agency will administer such funds and property;

(7) provide for (A) making such reports in such form and containing such information as the Secretary may require to carry out his functions under this subchapter, and (B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this subchapter;

(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

(9) provide satisfactory assurance that Federal funds made available under this subchapter (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such State and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Secretary may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

(10) provide consistent with procedures prescribed pursuant to section 1417(a)(2) of this title, satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this subchapter to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized education programs), in accordance with such criteria that the Secretary shall prescribe pursuant to section 1417 of this title; and

(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials, and administrators of programs for handicapped children, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, (B) comments

publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this subchapter, and (C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of his responsibilities under section 1418 of this title.

Additional assurances

(b) Whenever a State educational agency provides free appropriate public education for handicapped children, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) of this section as are contained in section 1414(a) of this title, except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 1414(a) of this title.

Notice and hearing prior to disapproval of plan

(c) The Secretary shall approve any State plan and any modification thereof which—

(1) is submitted by a State eligible in accordance with section 1412 of this title; and

(2) meets the requirements of subsection (a) and subsection (b) of this section.

The Secretary shall disapprove any State plan which does not meet the requirements of the preceding sentence, but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

Participation of handicapped children in private schools

(d)(1) If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of handicapped children enrolled in private elementary and secondary schools as required by subsection (a)(4), the Secretary shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a)(4).

(2)(A) When the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services an amount per child which may not exceed the Federal amount provided per child under this part to all handicapped children enrolled in the State for services for the fiscal year preceding the fiscal year for which the determination is made.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(4).

(3)(A) The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or his designee to show cause why such action should not be taken.

(B) If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

Pub. L. 91-230, Title VI, § 613, Apr. 13, 1970, 84 Stat. 179; amended by Pub. L. 93-380, Title VI, §§ 614(c), (d), 615(b), (c), Title VIII, § 843(b)(2), Aug. 21, 1974, 88 Stat. 581, 583, 611; Pub. L. 94-142, §§ 2(b)(3), 5(a), Nov. 29, 1975, 89 Stat. 774, 782, and by Pub. L. 98-199, § 7, Dec. 2, 1983, 97 Stat. 1359.

§ 1414. Application

Requisite features

(a) A local educational agency or an intermediate educational unit which desires to receive payments under section

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1411(d) of this title for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

(1) provide satisfactory assurance that payments under this subchapter will be used for excess costs directly attributable to programs which—

(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are handicapped, regardless of the severity of their handicap, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

(B) establish policies and procedures in accordance with detailed criteria prescribed under section 1417(c) of this title;

(C) establish a goal of providing full educational opportunities to all handicapped children, including—

(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 1413(a)(3) of this title;

(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education to all handicapped children, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education;

(iii) the participation and consultation of the parents or guardian of such children; and

(iv) to the maximum extent practicable and consistent with the provisions of section 1412(5)(B) of this title, the provision of special services to enable such children to participate in regular educational programs;

(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

(2) provide satisfactory assurance that (A) the control of funds provided under this subchapter, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this subchapter, and that a public agency will administer such funds and property, (B) Federal funds expended by local educational agencies and intermediate educational units for programs under this subchapter (i) shall be used to pay only the excess costs directly attributable to the education of handicapped children, and (ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant such State and local funds, and (C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this subchapter;

(3)(A) provide for furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this subchapter, including information relating to the educational achievement of handicapped children participating in programs carried out under this subchapter; and

(B) provide for keeping such records, and provide for affording such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such information furnished under subclause (A);

(4) provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all evaluation and reports required under clause (3) shall be public information;

(5) provide assurances that the local educational agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually;

(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provision of paragraph (1) through paragraph (7) of section 1412 and section 1413(a) of this title; and

(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 1412(5)(B), 1412(5)(C), and 1415 of this title.

Approval by State educational agencies of applications submitted by local educational agencies or intermediate educational units; notice and hearing

(b)(1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) of this section if the State educational agency determines that such application meets the requirements of subsection (a) of this section, except that no such application may be

approved until the State plan submitted by such State educational agency under subsection (a) of this section is approved by the Secretary under section 1413(c) of this title. A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) of this section if the State educational agency determines that such application does not meet the requirements of subsection (a) of this section.

(2)(A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

(i) make no further payments to such local educational agency or such intermediate educational unit under section 1420 of this title until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a) of this section.

(B) The provisions of the last sentence of section 1416(a) of this title shall apply to any local educational agency or any intermediate educational unit receiving any notification from a State educational agency under this paragraph.

(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 1415 of this title which is adverse to the local educational agency or intermediate educational unit involved in such decision.

Consolidated applications

(c)(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to recieve payments because of the application of section 1411(c)(4)(A)(i) of this title or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(2)(A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agencies may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 1411(d) of this title if an individual application of any such local educational agency has been approved.

(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 1412 and section 1413(a) of this title and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this subchapter.

(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this subchapter, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

Special education and related services provided directly by State educational agencies; regional or State centers

(d) Whenever a State educational agency determines that a local educational agency—

(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a) of this section;

(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

(3) has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special educational and related services directly to handicapped children residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this subchapter.

Reallocation of funds

(e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 1411(d) of this title, to such other local educational agencies within the State as are not adequately providing special

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education and related services to all handicapped children residing in the areas served by such other local educational agencies.

Programs using State or local funds

(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii) of this section, any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 1411(d) of this title for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

Pub. L. 91-230, Title VI, § 614, Apr. 13, 1970, 84 Stat. 181; amended by Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 784.

§ 1415. Procedural safeguards

Establishment and maintenance

(a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this subchapter shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

Required procedures; hearing

(b)(1) The procedures required by this section shall include, but shall not be limited to—

(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, available, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as surrogate for the parents or guardian;

(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

(i) proposes to initiate or change, or

(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(D) procedures designed to assure that the notice required by clause (C) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

Review of local decision by State educational agency

(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

Enumeration of rights accorded parties to hearings

(d) Any party to any hearing conducted pursuant to subsections (b) and (c) of this section shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 1413(a)(12) of this title).

Civil action; jurisdiction

(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) of this section shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) of this section shall be final, except that any party may bring an action under paragraph (2) of this subsection.

(2) Any party aggrieved by the findings and decision made under subsection (b) of this section who does not have the right to an appeal under subsection (c) of this section, and any party aggrieved by the findings and decision under subsection (c) of this section, shall have the right to bring a civil action with respect to the complaint presented pursuant to this

section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

Pub. L. 91-230, Title VI, § 615, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 788.

§ 1416. Withholding of payments; judicial review

(a) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

(1) that there has been a failure to comply substantially with any provision of section 1412 or section 1413 of this title, or

(2) that in the administration of the State plan there is a failure to comply with any provision of this subchapter or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan,

the Secretary (A) shall, after notifying the State educational agency, withhold any further payments to the State under this subchapter, and (B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 1413(a)(2) of this title within his jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children. If the Secretary withholds further payments under clause (A) or clause (B) he may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this subchapter to specified local educational agencies or intermediate educational units affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this subchapter, as specified in clause (1) or clause (2), no further payments shall be made to the State under this subchapter or under the Federal programs specified in section 1413(a)(2) of this title within his jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children, or payments by the State educational agency under this subchapter shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

(b)(1) If any State is dissatisfied with the Secretary's final action with respect to its State plan submitted under section 1413 of this title, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of Title 28.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

Pub. L. 91-230 Title VI, § 616, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 789.

§ 1417. Administration

Duties of Secretary

(a)(1) In carrying out his duties under this subchapter, the Secretary shall—

(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this subchapter;

(B) provide such short-term training programs and institutes as are necessary;

(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

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(D) assure that each State shall, within one year after November 29, 1975, provide certification of the actual number of handicapped children receiving special education and related services in such State.

(2) As soon as practicable after November 29, 1975, the Secretary shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting State plans under this subchapter in order to assure equity among the States.

Rules and regulations

(b) In carrying out the provisions of this subchapter, the Secretary (and the Secretary, in carrying out the provision of subsection (c) of this section)* shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

Protection of rights and privacy of parents and students

(c) The Secretary shall take appropriate action, in accordance with the provisions of section 1232g of this title, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this subchapter.

Hiring of qualified personnel

(d) The Secretary is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 1418 of this title and to carry out his duties under subsection (a)(1) of this section without regard to the provisions of Title 5 relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

Pub. L. 91-230, Title VI, § 617, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 791.

§ 1418. Evaluation

(a) The Secretary shall directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, and evaluations—

(1) to assess progress in the implementation of this Act, the impact, and the effectiveness of State and local efforts to provide free appropriate public education to all handicapped children and youth; and

(2) to provide Congress with information relevant to policy-making and provide Federal, State, and local educational agencies with information relevant to program management, administration, and effectiveness with respect to such education.

(b) In carrying out the responsibilities under this section, the Secretary, on at least an annual basis, shall obtain data concerning programs and projects assisted under this Act, and under other Federal laws relating to the education of handicapped children and youth, and such additional information, from State and local educational agencies and other appropriate sources, as is necessary for the implementation of this Act including—

(1) the number of handicapped children and youth in each State receiving a free appropriate public education (special education and related services) by disability category and by age group (3-5, 6-11, 12-17, and 18-21);

(2) the number of handicapped children and youth in each State who are participating in regular educational programs, by disability category (consistent with the requirements of section 612(5)(B) and section 614(a)(1)(C)(iv)), and the number of handicapped children and youth in separate classes, separate schools or facilities, or public or private residential facilities, or who have been otherwise removed from the regular education environment;

(3) the number of handicapped children and youth exiting the educational system each year through program completion or otherwise, by disability category and age, and anticipated services for the next year;

(4) the amount of Federal, State, and local funds expended in each State specifically for special education and related services (which may be based upon a sampling of data from State agencies including State and local educational agencies);

(5) the number and type of personnel that are employed in the provision of special education and related services to handicapped children and youth by disability category served, and the estimated number and type of additional personnel by disability category needed to adequately carry out the policy established by this Act; and

(6) a description of the special education and related services needed to fully implement the Act throughout each State, including estimates of the number of handicapped children and youth within each disability by age group (3-5, 6-11, 12-17, and 18-21) in need of improved services and the type of programs and services in need of improvement.

(c) The Secretary shall, by grant, contract, or cooperative agreement, provide for evaluation studies to determine the impact of this Act. Each such evaluation shall include recommendations for improvement of the programs under this Act. The Secretary shall, not later than July 1 of each year, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed evaluation priorities for review and comment.

(d)(1) The Secretary is authorized to enter into cooperative agreements with State educational agencies to carry out

* So in original; probably should read: "In carrying out the provisions of this subchapter and of subsection (c) of this section, the Secretary shall issue, . . ."

studies to assess the impact and effectiveness of programs assisted under the Act.

(2) Such agreements shall--

(A) provide for the payment of not to exceed 60 per centum of the total cost of studies conducted by a participating State educational agency to assess the impact and effectiveness of programs assisted under the Act; and

(B) be developed in consultation with the State Advisory Panel established under this Act, the local educational agencies, and others involved in or concerned with the education of handicapped children and youth.

(3) The Secretary shall provide technical assistance to participating State educational agencies in the implementation of the study design, analysis, and reporting procedures.

(4) In addition, the Secretary shall disseminate information from such studies to State educational agencies, and as appropriate, others involved in, or concerned with the education of handicapped children and youth.

(e)(1) At least one study shall be a longitudinal study of a sample of handicapped students, encompassing the full range of handicapping conditions, examining their educational progress while in special education and their occupational, educational, and independent living status after graduating from secondary school or otherwise leaving special education.

(2) At least one study shall focus on obtaining and compiling current information available through State educational agencies and local educational agencies and other service providers, regarding State and local expenditures for educational services for handicapped students (including special education and related services), and gather information needed in order to calculate a range of per pupil expenditures by handicapping condition.

(f)(1) Not later than one hundred and twenty days after the close of each fiscal year, the Secretary shall publish and disseminate an annual report on the progress being made toward the provision of a free appropriate public education to all handicapped children and youth. The annual report is to be transmitted to the appropriate committees of each House of Congress and the National Advisory Committee on the Education of Handicapped Children and Youth, and published and disseminated in sufficient quantities to the education community at large and to other interested parties.

(2) The Secretary shall include in each annual report—

(A) an index and summary of each evaluation activity and results of studies conducted under subsection (c);

(B) a compilation and analysis of data gathered under subsection (b);

(C) a description of findings and determinations resulting from monitoring reviews of State implementation of part B of this Act;

(D) an analysis and evaluation of the participation of handicapped children and youth in vocational education programs and services;

(E) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to ensure that handicapped children and youth receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children and youth in day or residential facilities; and

(F) any recommendations for change in the provision of this Act or any other Federal law providing support for the education of handicapped children and youth.

(3) In the annual report for fiscal year 1985 (published in 1986) and for every third year thereafter, the Secretary shall include in the annual report—

(A) an index of all current projects funded under parts C through F of this Act; and

(B) data reported under sections 621, 622, 623, 627, 634, 641, and 653.

(g) There are authorized to be appropriated $3,100,000 for fiscal year 1984, $3,270,000 for fiscal year 1985, and $3,440,000 for fiscal year 1986 to carry out the provisions of this section.

Pub. L. 91-230, Title VI, § 618, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 791, and amended Pub. L. 98-199, § 8, Dec. 2, 1983, 97 Stat. 1360.

§ 1419. Incentive grants

Authority to make grants

(a) The Secretary shall make a grant to any State which—

(1) has met the eligibility requirements of section 1412 of this title;

(2) has a State plan approved under section 1413 of this title; and

(3) provides special education and related services to handicapped children aged three to five, inclusive, who are counted for the purposes of section 1411(a)(1)(A) of this title.

The maximum amount of the grant for each fiscal year which a State may receive under this section shall be $300 for each such child in that State.

Application

(b) Each State which—

(1) has met the eligibility requirements of section 1412 of this title,

(2) has a State plan approved under section 1413 of this title, and

(3) desires to receive a grant under this section,

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shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

Payment

(c) The Secretary shall pay to each State having an application approved under subsection (b) of this section the amount to which the State is entitled under this section, which amount shall be used for the purpose of providing the services specified in clause (3) of subsection (a) of this section and for providing special education and related services for handicapped children from birth to three years of age.

Ratable reduction or increase of payments

(d) If the sums appropriated for any fiscal year for making payments to States under this section are not sufficient to pay in full the maximum amounts which all States may receive under this subchapter for such fiscal year, the maximum amounts which all States may receive under this subchapter for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

Authorization of appropriations

(e) In addition to the sums necessary to pay the entitlements under section 1411 of this title, there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

Pub. L. 91-230, Title VI, § 619, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 793, and amended by Pub. L. 98-199, § 9, Dec. 2, 1983, 97 Stat. 1363.

§ 1420. Payments

(a) The Secretary shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this subchapter. Any State educational agency receiving payments under this subsection shall distribute payments to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this subchapter after the State educational agency has approved applications of such agencies or units for payments in accordance with section 1414(b) of this title.

(b) Payments under this subchapter may be made in advance or by way of reimbursement and in such installments as the Secretary may determine necessary.

Pub. L. 91-230, Title VI, § 620, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 793.

SUBCHAPTER III — CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF HANDICAPPED

§ 1421. Regional resource centers

(a) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with, institutions of higher education, private nonprofit organizations, State educational agencies, or combinations of such agencies and institutions (which combinations may include one or more local educational agencies) within particular regions of the United States, to pay all or part of the cost of the establishment and operation of regional resource centers. Each regional resource center shall provide consultation, technical assistance, and training to State educational agencies and through such State agencies to local educational agencies. Each center established or operated under this section shall—

(1) assist in identifying and solving persistent problems in providing quality special education and related services for handicapped children and youth;

(2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to handicapped children and youth and their families;

(3) gather and disseminate information to all State educational agencies within the region and coordinate activities with other centers assisted under this section and other relevant projects conducted by the Department of Education; and

(4) assist in the improvement of information dissemination to and training activities for professionals and parents of handicapped children.

(b) In determining whether to approve an application for a project under this section, the Secretary shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to fulfill the responsibilities under subsection (a).

(c) Each regional resource center shall report a summary of materials produced or developed and this information shall be included in the annual report to Congress required under section 1418.

Pub. L. 91-230, Title VI, § 621, Apr. 13, 1970, 84 Stat. 181; amended by Pub. L. 98-199, §§ 621, Dec. 2, 1983, 97 Stat. 1357 and by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1363.

§ 1422. Services for deaf-blind children and youth

(a)(1) The Secretary is authorized to make grants to, or to enter into cooperative agreements or contracts with, public or nonprofit private agencies, institutions, or organizations to assist State educational agencies to—

(A) assure deaf-blind children and youth provision of special education and related services as well as vocational and transitional services; and

(B) make available to deaf-blind youth upon attaining the age of twenty-two, programs and services to facilitate their transition from educational to other services.

(2) A grant, cooperative agreement, or contract pursuant to paragraph (1)(A) may be made only for programs providing (A) technical assistance to agencies, institutions, or organizations providing educational services to deaf-blind children or youth; (B) preservice or inservice training to

paraprofessionals, professionals, or related services personnel preparing to serve, or serving, deaf-blind children or youth; (C) replication of successful innovative approaches to providing educational or related services to deaf-blind children and youth; and (D) facilitation of parental involvement in the education of their deaf-blind children and youth. Such programs may include—

(i) the diagnosis and educational evaluation of children and youth at risk of being certified deaf-blind;

(ii) programs of adjustment, education, and orientation for deaf-blind children and youth; and

(iii) consultative, counseling, and training services for the families of deaf-blind children and youth.

(3) A grant, cooperative agreement, or contract pursuant to paragraph (1)(B) may be made only for programs providing (A) technical assistance to agencies, institutions, and organizations serving, or proposing to serve, deaf-blind individuals who have attained age twenty-two years; (B) training or inservice training to paraprofessionals or professionals serving, or preparing to serve, such individuals; and (C) assistance in the development or replication of successful innovative approaches to providing rehabilitative, semi-supervised, or independent living programs.

(4) In carrying out this subsection, the Secretary shall take into consideration the need for a center for deaf-blind children and youth in light of the general availability and quality of existing services for such children and youth in the part of the country involved.

(b) The Secretary is also authorized to enter into a limited number of cooperative agreements or contracts to establish and support regional programs for the provision of technical assistance in the education of deaf-blind children and youth.

(c)(1) Programs supported under this section shall report annually to the Secretary on (A) the numbers of deaf-blind children and youth served by age, severity, and nature of deaf-blindness; (B) the number of paraprofessionals, professionals, and family members directly served by each activity; and (C) the types of services provided.

(2) The Secretary shall examine the numbe of deaf-blind children and youth (A) reported under subparagraph (c)(1)(A) and by the States; (B) served by the programs under part B of this Act and subpart 2 of part B, title I, of the Elementary and Secondary Education Act of 1965 (as modified by chapter I of the Education Consolidation and Improvement Act of 1981); and (C) the Deaf-Blind Registry of each State. The Secretary shall revise the count of deaf-blind children and youth to reflect the most accurate count.

(3) The Secretary shall summarize these data for submission in the annual report required under section 618.

(d) The Secretary shall disseminate materials and information concerning effective practices in working with deaf-blind children and youth.

Pub. L. 91-230, Title VI, § 622, Apr. 13, 1970, 84 Stat. 182; amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1364.

§ 1423. Early education for handicapped children

(a)(1) The Secretary is authorized to arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations, for the development and operation of programs of experimental preschool and early education for handicapped children which the Secretary determines show promise of promoting a comprehensive and strengthened approach to the special problems of such children. Such programs shall include activities and services designed to (1) facilitate the intellectual, emotional, physical, mental, social, and language development of such children; (2) encourage the participation of the parents of such children in the development and operation of any such program; and (3) acquaint the community to be served by any such program with the problems and potentialities of such children.

(2) Programs authorized by this subsection shall be coordinated with similar programs in the schools operated or supported by State or local educational agencies of the community to be served.

(3) As much as is feasible, such programs shall be geographically dispersed throughout the Nation in urban as well as rural areas.

(4) No arrangement pursuant to this subsection shall provide for the payment of more than 90 per centum of the total annual costs of development, operation, and evaluation of any program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services.

(5) For purposes of this subsection the term "handicapped children" includes children from birth through eight years of age.

(b)(1) Subject to paragraph (2), the Secretary is authorized to make a grant to each State through the State educational agency or other State agency to assist such State agency in planning, developing, and implementing a comprehensive delivery system for the provision of special education and related services to handicapped children from birth through five years of age.

(2) The Secretary shall make one of the following types of grants (authorized under paragraph (1)) to any State which submits an application which meets the requirements of this subsection:

(A) Planning Grant — A grant for a maximum of two years for the purpose of assessing needs within the State and establishing a procedure and design for the development of a State plan which includes parent participation and training of professionals and others.

(B) Development Grant — A grant for a maximum of three years for the purpose of developing a comprehensive State plan, and gaining approval of this plan from the State Board of Education, the Commissioner of Education, or other designated official of the appropriate State agency.

(C) Implementation Grant — A grant for a maximum of three years for the purpose of implementing and evaluating

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the comprehensive State plan. A State must apply for annual renewal of such grant.

(3) Each State educational agency or other State agency desiring to receive a grant under this subsection shall submit an application at such time, in such manner, and accompanied by such information as the Secretary considers necessary. Each such application shall contain assurances and evidence that:

(A) The State agency receiving the grant will coordinate with other appropriate State agencies (including the State educational agency) in carrying out the grant.

(B) The State plan will address the special education and related service needs of all handicapped children from birth through five years of age with special emphasis on children who are often not identified and children who are not now served.

(C) The State plan will be closely coordinated with child-find efforts under section 612(2)(C) and with preschool incentive grant activities under section 619 of this Act.

(4) The Secretary shall include in the annual report under section 618 of this Act the following:

(A) The States and State agencies receiving grants under this subsection and the types of grants received.

(B) A description of the activities in each State being undertaken through grants under this subsection.

(C) Beginning in 1986, in consultation with the National Council for the Handicapped and the National Advisory Committee on the Education of Handicapped Children and Youth, a description of the status of special education and related services to handicapped children from birth through five years of age (including those receiving services through Head Start, Developmental Disabilities Program, Crippled Children's Services, Mental Health/Mental Retardation Agency, and State child-development centers and private agencies under contract with local schools).

(c)(1) Not less than 30 per centum of the funds made available in any year for the purposes of this section may be used for purposes of subsection (b).

(2) Not less than 10 per centum of the funds made available in any year for the purposes of subsection (b) shall be available for the provision of training and technical assistance to States preparing to receive or receiving grants under this section.

Pub. L. 91-230, Title VI, § 643, Apr. 13, 1970, 84 Stat. 183; amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1365.

§ 1424. Research, innovation, training, and dissemination activities in connection with centers and services for handicapped

(a) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with such organizations or institutions, as are determined by the Secretary to be appropriate, consistent with the purposes of this part, for—

(1) research to identify and meet the full range of special needs of handicapped children and youth;

(2) the development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of handicapped children and youth;

(3) training of personnel for programs specifically designed for handicapped children; and

(4) dissemination of materials and information about practices found effective in working with such children and youth.

(b) In making grants and contracts under this section, the Secretary shall ensure that the activities funded under such grants and contracts will be coordinated with similar activities funded from grants and contracts under other sections of this Act.

(c) In carrying out the provisions of this section the Secretary is authorized to address the needs of the severely handicapped.

Pub. L. 91-230, Title VI, § 624, Apr. 13, 1970, 84 Stat. 183; amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1366.

§ 1424a. Postsecondary education programs

(a)(1) The Secretary is authorized to make grants to or enter into contracts with State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for handicapped individuals.

(2) In making grants or contracts on a competitive basis under this section, the Secretary shall give priority consideration to the four regional centers for the deaf and to model programs for individuals with handicapping conditions other than deafness—

(A) for developing and adapting programs of postsecondary, vocational, technical, continuing, or adult education to meet the special needs of handicapped individuals; and

(B) for programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers.

(3) Of the sums made available for programs under this section, not less than $2,000,000 shall first be available for the four regional centers for the deaf.

(b) For the purposes of this section the term "handicapped individuals" means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedi-

cally impaired, or other health impaired individuals, or individuals with specific learning disabilities who by reason thereof require special education and related services.

Pub. L. 91-230, Title VI, § 625, as added Pub. L. 93-380, Title VI, § 616, Aug. 21, 1974, 88 Stat. 584, and amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1367.

§ 1425. Secondary education and transitional services for handicapped youth

(a) The Secretary is authorized to make grants to, or enter into contracts with, institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (Public Law 97-300)) to—

(1) strengthen and coordinate education, training, and related services for handicapped youth to assist in the transitional process to postsecondary education, vocational training, competitive employment, continuing education, or adult services; and

(2) stimulate the improvement and development of programs for secondary special education.

(b) Projects assisted under this section may include—

(1) developing strategies and techniques for transition to independent living, vocational training, postsecondary education, and competitive employment for handicapped youth;

(2) establishing demonstration models for services and programs which emphasize vocational training, transitional services, and placement for handicapped youth;

(3) conducting demographic studies which provide information on the numbers, age levels, types of handicapping conditions, and services required for handicapped youth in need of transitional programs;

(4) specially designed vocational programs to increase the potential for competitive employment for handicapped youth;

(5) research and development projects for exemplary service delivery models and the replication and dissemination of successful models;

(6) initiating cooperative models between educational agencies and adult service agencies, including vocational rehabilitation, mental health, mental retardation, public employment, and employers, which facilitate the planning and developing of transitional services for handicapped youth to postsecondary education, vocational training, employment, continuing education, and adult services; and

(7) developing appropriate procedures for evaluating vocational training, placement, and transitional services for handicapped youth.

(c) For purposes of subsections (b)(1) and (b)(2), if an applicant is not an educational agency, such applicant shall coordinate with the State educational agency.

(d) Projects funded under this section shall to the extent appropriate provide for the direct participation of handicapped students and the parents of handicapped students in the planning, development, and implementation of such projects.

(e) The Secretary, as appropriate, shall coordinate programs described under this section with projects developed under section 311 of the Rehabilitation Act of 1973.

Amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1367.

§ 1426. Program evaluations

The Secretary shall conduct, either directly or by contract, a thorough and continuing evaluation of the effectiveness of each program assisted under this part. Results of the evaluations shall be analyzed and submitted to the appropriate committees of each House of Congress together with the annual report under section 1418.

Pub. L. 91-230, Title VI, § 626, formerly § 625, Apr. 13, 1970, Stat. 183, renumbered Pub. L. 93-380, Title VI, § 616, Aug. 21, 1974, 88 Stat. 584, amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1368.

§ 1427. Authorization of appropriations

(a) There are authorized to be appropriated to carry out the provisions of section 621, $5,700,000 for fiscal year 1984, $6,000,000 for fiscal year 1985, and $6,300,000 for fiscal year 1986.

(b) There are authorized to be appropriated to carry out the provisions of section 622, $15,000,000 for fiscal year 1984, and for each of the two succeeding fiscal years.

(c) There are authorized to be appropriated to carry out the provisions of section 623, $26,000,000 for fiscal year 1984, $27,100,000 for fiscal year 1985, and $28,300,000 for fiscal year 1986.

(d) There are authorized to be appropriated to carry out the provisions of subsection (c) of section 624, $5,000,000 for fiscal year 1984, $5,300,000 for fiscal year 1985, and $5,600,000 for fiscal year 1986.

(e) There are authorized to be appropriated to carry out the provisions of section 625, $5,000,000 for fiscal year 1984, $5,300,000 for fiscal year 1985, and $5,500,000 for fiscal year 1986.

(f) There are authorized to be appropriated to carry out the provisions of section 626, $6,000,000 for fiscal year 1984, $6,330,000 for fiscal year 1985, and $6,660,000 for fiscal year 1986.

Pub. L. 91-230, Title VI, § 627, formerly § 626, Apr. 13, 1970, 84 Stat. 184, renumbered and amended Pub. L. 93-380, Title VI, §§ 616, 617, Aug. 21, 1974, 88 Stat. 584, amended by Pub. L. 95-49, § 2, June 17, 1977, 91 Stat. 230, and by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1368.

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SUBCHAPTER IV — TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

§ 1431. Grants for personnel training

(a)(1) The Secretary is authorized to make grants, which may include scholarships with necessary stipends and allowances, to institutions of higher education (including the university-affiliated facilities program under the Rehabilitation Act of 1973 and the satellite network of the developmental disabilities program) and other appropriate nonprofit agencies to assist them in training personnel for careers in special education including—

(A) special education teaching, including speech, language, and hearing impaired, and adaptive physical education;

(B) related services to handicapped children and youth in educational settings;

(C) special education supervision and administration;

(D) special education research; and

(E) training of special education personnel and other personnel providing special services.

(2) The Secretary shall ensure that grants awarded to applicant institutions and agencies under this subsection meet State and professionally recognized standards for the training of special education and related services personnel.

(3) Grants under this subsection may be used by such institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary.

(4) The Secretary in carrying out the purposes of this subsection may reserve a sum not to exceed 5 per centum of the amount available for this subsection in each fiscal year for contracts to prepare personnel in areas where shortages exist, when a response to that need has not been adequately addressed by the grant process.

(b) The Secretary is authorized to make grants to institutions of higher education and other appropriate nonprofit agencies to conduct special projects to develop and demonstrate new approaches for the preservice training purposes set forth in subsection (a), for regular educators, and for the inservice training of special education personnel, including classroom aides, related services personnel, and regular education personnel who serve handicapped children.

(c)(1) The Secretary is authorized to make grants through a separate competition to private nonprofit organizations for the purpose of providing training and information to parents of handicapped children and volunteers who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of handicapped children. Such grants shall be designed to meet the unique training and information needs of parents of handicapped children, including those who are members of groups that have been traditionally underrepresented, living in the area to be served by the grant.

(2) In order to receive a grant under this subsection a private nonprofit organization shall—

(A) be governed by a board of directors on which a majority of the members are parents of handicapped children and which includes members who are professionals in the field of special education and related services who serve handicapped children and youth; or if the nonprofit private organization does not have such a board, such organization shall have a membership which represents the interests of individuals with handicapping conditions, and shall establish a special governing committee on which a majority of the members are parents of handicapped children and which includes members who are professionals in the fields of special education and related services, to operate the training and information program under this subsection;

(B) serve the parents of children with the full range of handicapping conditions under such grant program; and

(C) demonstrate the capacity and expertise to conduct effectively the training and information activities authorized under this subsection.

(3) The board of directors or special governing committee of a private nonprofit organization receiving a grant under this subsection shall meet at least once in each calendar quarter to review such parent training and information activities, and each such committee shall advise the governing board directly of its views and recommendations. Whenever a private nonprofit organization requests the renewal of a grant under this subsection, the board of directors or the special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

(4) The Secretary shall ensure that grants under this subsection will—

(A) be distributed geographically to the greatest extent possible throughout all the States; and

(B) be targeted to parents of handicapped children in both urban and rural areas, or on a State, or regional basis.

(5) Parent training and information programs assisted under this subsection shall assist parents to—

(A) better understand the nature and needs of the handicapping conditions of their child;

(B) provide followup support for their handicapped child's educational programs;

(C) communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(D) participate in educational decisionmaking processes including the development of their handicapped child's individualized educational program;

(E) obtain information about the programs, services, and resources available to their handicapped child, and the degree to which the programs, services, and resources are appropriate; and

(F) understand the provisions for the education of handicapped children as specified under part B of this Act.

(6) Each private nonprofit organization operating a program receiving assistance under this subsection shall consult with appropriate agencies which serve or assist handicapped children and youth and are located in the jurisdictions served by the program.

(7) The Secretary shall provide technical assistance, by grant or contract, for establishing, developing, and coordinating parent training and information programs.

Pub. L. 91-230, Title VI, § 631, Apr. 13, 1970, 84 Stat. 184; amended by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1369.

§ 1432. Grants to state educational agencies for traineeships

The Secretary shall make grants to State educational agencies to assist them in establishing and maintaining, directly or through grants to institutions of higher education, programs for the preservice and inservice training of teachers of handicapped children, or supervisors of such teachers.

Pub. L. 91-230, Title VI, § 632, Apr. 13, 1970, 84 Stat. 184; amended by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1371.

§ 1433. Grants to improve recruitment of educational personnel and dissemination of information concerning educational opportunities for the handicapped

(a) The Secretary is authorized to make a grant to or enter into a contract with a public agency or a nonprofit private organization or institution for a national clearinghouse on the education of the handicapped and to make grants or contracts with a public agency or a nonprofit private organization or institution for other support projects which may be deemed necessary by the Secretary to achieve the following objectives:

(1) to disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties concerning—

(A) programs relating to the education of the handicapped under this Act and under other Federal laws; and

(B) participation in such programs, including referral of individuals to appropriate national, State, and local agencies and organizations for further assistance;

(2) to encourage students and professional personnel to seek and obtain careers and employment in the various fields relating to the education of handicapped children and youth; and

(3) to provide information on available services and programs in postsecondary education for the handicapped.

(b) In addition to the clearinghouse established under subsection (a), the Secretary shall make a grant or enter into a contract for a national clearinghouse on postsecondary education for handicapped individuals for the purpose of providing information on available services and programs in postsecondary education for the handicapped.

(c)(1) In awarding the grants and contracts under this section, the Secretary shall give particular attention to any demonstrated experience at the national level relevant to performance of the functions established in this section, and ability to conduct such projects, communicate with the intended consumers of information, and maintain the necessary communication with other agencies and organizations.

(2) The Secretary is authorized to make contracts with profit-making organizations under this section only when necessary for materials or media access.

Pub. L. 91-230, Title VI, § 633, Apr. 13, 1970, 84 Stat. 184; amended by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1371.

§ 1434. Reports to Secretary

(a) Not more than sixty days after the end of any fiscal year, each recipient of a grant or contract under this part during such fiscal year shall prepare and submit a report to the Secretary. Each such report shall be in such form and detail as the Secretary determines to be appropriate, and shall include—

(1) the number of individuals trained under the grant or contract, by category of training and level of training; and

(2) the number of individuals trained under the grant or contract receiving degrees and certification, by category and level of training.

(b) A summary of the data required by this section shall be included in the annual report of the Secretary under section 618 of this Act.

Pub. L. 91-230, Title VI, § 634, Apr. 13, 1970, 84 Stat. 185; amended by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1372.

§ 1435. Authorization of appropriations

(a) There are authorized to be appropriated to carry out the provisions of this part (other than section 633) $58,000,000 for fiscal year 1984, $61,150,000 for fiscal year 1985, and $64,370,000 for fiscal year 1986. There are authorized to be appropriated to carry out the provisions of section 633, $1,000,000 for fiscal year 1984, $1,050,000 for fiscal year 1985, and $1,110,000 for fiscal year 1986.

(b) Of the funds appropriated pursuant to subsection (a) for any fiscal year, the Secretary shall reserve 10 per centum for activities under section 631(c).

Pub. L. 91-230, Title VI, § 636, Apr. 13, 1970, 84 Stat. 185; Pub. L. 93-380, Title V, § 618, Aug. 21, 1974, 88 Stat. 584; Pub. L. 95-49, § 3, June 17, 1977, 91 Stat. 230, amended by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1372.

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SUBCHAPTER V -- RESEARCH IN THE EDUCATION OF THE HANDICAPPED

§ 1441. Research and demonstration projects in education of handicapped children

(a) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for research and related activities, to assist special education personnel, related services personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth. Research and related activities shall be designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education-related practices and services for handicapped children and youth. Research and related activities assisted under this section shall include, but not be limited to, the following:

(1) The development of new and improved techniques and devices for teaching handicapped children and youth.

(2) The development of curricula which meet the unique educational needs of handicapped children and youth.

(3) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped children and youth.

(4) The development of program models and exemplary practices in areas of special education.

(5) The dissemination of information on research and related activities conducted under this part to interested individuals and organizations.

(b) In carrying out this section the Secretary shall consider the special education experience of the applicant and the ability of the applicant to disseminate the findings of any grant or contract.

(c) The Secretary shall publish proposed research priorities in the Federal Register every two years, not later than July 1, and shall allow a period of sixty days for public comments and suggestions. After analyzing and considering the public comments, the Secretary shall publish final research priorities in the Federal Register not later than thirty days after the close of the comment period.

(d) The Secretary shall provide an index (including the title of each research project and the name and address of the researching organization) of all research projects conducted in the prior fiscal year in the annual report described under section 618. The Secretary shall make reports of research projects available to the education community at large and to other interested parties.

(e) The Secretary shall coordinate the research priorities established under this section with research priorities established by the National Institute of Handicapped Research and shall provide information concerning research priorities established under this section to the National Council on the Handicapped and to the National Advisory Committee on the Education of Handicapped Children.

Pub. L. 91-230, Title VI, § 641, Apr. 13, 1970, 84 Stat. 185; Pub. L. 95-49, § 4, June 17, 1977, 91 Stat. 230, amended by Pub. L. 98-199, § 12, Dec. 2, 1983, 97 Stat. 1372.

§ 1442. Research and demonstration projects in physical education and recreation for handicapped children

The Secretary is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

Pub. L. 91-230, Title VI, § 642, Apr. 13, 1970, 84 Stat. 185; amended by Pub. L. 98-199, § 12, Dec. 2, 1983, 97 Stat. 1373.

§ 1443. Panels of experts

The Secretary shall from time to time appoint panels of experts who are competent to evaluate various types of proposals for projects under parts C, D, E, and F, and shall secure the advice and recommendations of one such panel before making any grant or contract under parts C, D, E, and F of this Act. The panels shall be composed of—

(1) individuals from the field of special education for the handicapped and other relevant disciplines who have significant expertise and experience in the content areas and age levels addressed in the proposals; and

(2) handicapped individuals and parents of handicapped individuals when appropriate.

Pub. L. 91-230, Title VI, § 643, Apr. 13, 1970, 84 Stat. 185, amended by Pub. L. 98-199, § 12, Dec. 2, 1983, 97 Stat. 1373.

§ 1444. Authorization of appropriations

For purposes of carrying out this part, there are authorized to be appropriated $20,000,000 for fiscal year 1984, $21,100,000 for fiscal year 1985, and $22,200,000 for fiscal year 1986.

Pub. L. 91-230, Title VI, § 644, Apr. 13, 1970, 84 Stat. 186; amended by Pub. L. 93-380, Title VI, §§ 619, Aug. 21, 1974, 88 Stat. 585; Pub. L. 95-49, § 5, June 17, 1977, 91 Stat. 231, and by Pub. L. 98-199, § 12, Dec. 2, 1983, 97 Stat. 1374.

SUBCHAPTER VI — INSTRUCTIONAL MEDIA FOR HANDICAPPED

§ 1451. Congressional statement of purpose

(a) The purposes of this subchapter are to promote —

(1) the general welfare of deaf persons by (A) bringing to such persons understanding and appreciation of those films which play such an important part in the general and cultural advancement of hearing persons, (B) providing through these films enriched educational and cultural experiences through which deaf persons can be brought into better touch with the realities of their environment, and (C) providing a wholesome and rewarding experience which deaf persons may share together, and

(2) the educational advancement of handicapped persons by (A) carrying on research in the use of educational media for the handicapped, (B) producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of the handicapped, and (C) training persons in the use of educational media for the instruction of the handicapped.

Pub. L. 91-230, Title VI, § 651, Apr. 13, 1970, 84 Stat. 186.

§ 1452. Captioned films and educational media for handicapped persons

Establishment of loan service

(a) The Secretary shall establish a loan service of captioned films and educational media for the purpose of making such materials available in the United States for nonprofit purposes to handicapped persons, parents of handicapped persons, and other persons directly involved in activities for the advancement of the handicapped in accordance with regulations.

Authority of Secretary

(b) The Secretary is authorized to—

(1) acquire films (or rights thereto) and other educational media by purchase, lease, or gift;

(2) acquire by lease or purchased[1] equipment necessary to the administration of this subchapter;

(3) provide, by grant or contract, for the captioning of films;

(4) provide, by grant or contract, for the distribution of captioned films and educational media and equipment through State schools for the handicapped and such other agencies as the Commissioner may deem appropriate to serve as local or regional centers for such distribution.

(5) provide, by grant or contract, for the conduct of research in the use of educational and training films and other educational media for the handicapped and the training of persons in the use of such films and media, including the payment to those persons of such stipends (including allowances for travel and other expenses of such persons and their dependents) as he may determine, which shall be consistent with prevailing practices under comparable federally supported programs;

(6) utilize the facilities and services of other governmental agencies; and

(7) accept gifts, contributions, and voluntary and uncompensated services of individuals and organizations.

Pub. L. 91-230, Title VI, § 652, Apr. 13, 1970, 84 Stat. 186; Pub. L. 93-380, Title VI, § 620(1), Aug. 21, 1974, 88 Stat. 585; Pub. L. 94-482, Title V, § 501(h), Oct. 12, 1976, 90 Stat. 2237.

§ 1453. Centers on educational media and materials for handicapped

(a) The Secretary is authorized to enter into agreements with institutions of higher education, State and local educational agencies, or other appropriate nonprofit agencies, for the establishment and operation of centers on educational media and materials for the handicapped, which together will provide a comprehensive program of activities to facilitate the use of new educational technology in education programs for handicapped persons, including designing, developing, and adapting instructional materials, and such other activities consistent with the purposes of this subchapter as the Secretary may prescribe in such agreements. Any such agreement shall—

(1) provide that Federal funds paid to a center will be used solely for such purposes as are set forth in the agreement; and

(2) authorize the center involved, subject to prior approval by the Secretary, to contract with public and private agencies and organizations for demonstration projects.

Preferences to qualified institutions and agencies

(b) In considering proposals to enter into agreements under this section, the Secretary shall give preference to institutions and agencies—

(1) which have demonstrated the capabilities necessary for the development and evaluation of educational media for the handicapped; and

(2) which can serve the educational technology needs of the Model High School for the Deaf (established under Public Law 89-694).

Annual Report to Congress

(c) The Secretary shall make an annual report on activities carried out under this section which shall be transmitted to the Congress.

Pub. L. 91-230, Title VI, § 653, Apr. 13, 1970, 84 Stat. 187; Pub. L. 94-142, § 6(b), Nov. 29, 1975, 89 Stat. 795.

[1] So in original. Probably should read "purchase."

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§ 1454. Authorization of appropriations

For the purposes of carrying out this part, there are authorized to be appropriated $19,000,000 for fiscal year 1984, $20,000,000 for fiscal year 1985, and $21,100,000 for fiscal year 1986

Pub. L. 91-230, Title VI, § 653, Apr. 13, 1970, 84 Stat. 187; amended by Pub. L. 93-380, Title VI, §§ 620(2), Aug. 21, 1974, 88 Stat. 585; Pub. L. 95-49, § 6, June 17, 1977, 91 Stat. 231; and by Pub. L. 98-199, § 13, Dec. 2, 1983, 97 Stat. 1374